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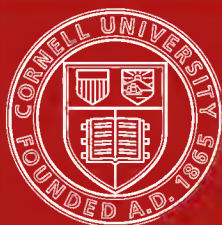
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**Public papers of David B. Hill, governor**



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STATE OF NEW YORK.

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PUBLIC PAPERS

OF

DAVID B. HILL,

GOVERNOR.

1887.

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ALBANY, N. Y.

1888.





PUBLIC PAPERS  
OF  
GOVERNOR HILL.  
1887.

ANNUAL MESSAGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *January 4, 1887.* }

*To the Legislature:*

The Constitution of our State requires that the Governor "shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to them as he shall judge expedient."

This duty I proceed to discharge this year in the briefest manner possible, having, in previous annual messages, very fully, and at considerable length, expressed my views upon the various questions affecting the State. I may, however, take occasion during the session to communicate with you by special message more frequently than has heretofore been the custom, upon such matters as may arise from time to time, or upon subjects in relation to which some suggestions may hereafter be deemed especially desirable and expedient.

## RENEWAL OF PREVIOUS RECOMMENDATIONS.

Before referring particularly to the condition of the State, or making any new suggestions, I may be permitted to call your attention to those made by me in previous annual messages, upon which no final legislation has yet been perfected. Some of these were embodied in bills which passed one house but failed in the other; others have been largely discussed, but no effective action taken thereon, while a few have not been considered at all.

It is not deemed inappropriate at this time to respectfully renew such recommendations (some sixteen in number), and invoke for them again your careful consideration. They are as follows:

*First.* A permanent system for the employment of prison labor.

This recommendation is not, however, intended to include or favor the reinstatement of the contract system, or any other plan that is equivalent to it. The Legislature of 1883 permitted the people to vote upon the question of the abolition of the contract system, and they having, by a large majority, expressed themselves as opposed to its continuance, it becomes our duty to respect their verdict. Some other system must be devised which should be substantially free from the objections which were urged to the contract system. My views as to the general features which should characterize whatever plan may be proposed are so well known, and have been so frequently expressed to the Legislature, that any further suggestions upon this subject at this time seem unnecessary.

*Second.* A measure providing for spring municipal elections in the city of New York.

Such measure should be simple and distinctive, and should not be complicated with any other schemes. It should be

essentially a spring election law, and nothing more. It should provide for municipal elections once in two years, rather than annually, thereby avoiding the expense and the loss of public interest incident upon too frequent elections; it should not interfere with the terms of office of present incumbents; it should fix a date for such elections that will accommodate the great majority of the people, and facilitate rather than retard their free exercise of the elective franchise.

*Third.* An amendment to the election laws of the State so as to permit naturalized citizens to be registered without the production of their naturalization papers, in case of the loss or destruction of such papers, and making their oath or affidavit conclusive evidence of citizenship for the purposes of registration. The necessity for this amendment was fully explained in my annual message of 1885, to which the Legislature is respectfully referred. The propriety of placing naturalized citizens upon an equality with the native born, in the matter of affording equal facilities for honest registration and honest voting, cannot seriously be questioned by unprejudiced men. It is submitted that justice in this respect should not longer be delayed.

*Fourth.* A general law for the incorporation of trust companies.

Last year five special acts were passed for the incorporation of as many different trust companies, from which I felt compelled to withhold my approval. Each conferred different powers, and imposed different restrictions, and established a different liability for the respective companies, and such acts constituted special legislation of the most objectionable character. Such companies should be organized under general laws, which should authorize the assumption of uniform powers and liabilities by each company, and it should be provided that the administration of the affairs of all trust companies

should be subjected alike to the supervision, regulation and inspection of the Superintendent of the Banking Department.

The system of general legislation contemplated by the Constitution will never be perfected so long as the Legislature each year favorably listens to the desire and claims of interested parties for special acts.

*Fifth.* An amendment to the General Assignment Act, for the purpose of preventing unjust favoritism, unfair discriminations, and an inequitable distribution of the debtor's property.

These evils can be cured in a measure at least, by limiting the preferences which a debtor has the right to make, to a certain portion of the assigned estate, or forbidding them altogether except in the single instance of wages of employees. The preferences (other than the exception mentioned) which are now by the policy of the law allowed to be made, are a fruitful source of litigation, and the occasion of much injustice. The power being subject to great abuse, it should either be properly restricted or entirely abrogated.

*Sixth.* An act providing for the selection of a special counsel for the Legislature, whose duties shall be to prepare in legal form all bills to be introduced by any member; to give advice to members and to the various committees in reference to proposed legislation; to inspect the bills before their final passage in order to detect errors, imperfections and mistakes; to suggest and frame the necessary amendments, and generally to act as the legal adviser of the Legislature as to matters of form.

Much valuable legislation is lost every year by reason of defective bills, hastily drawn and crudely prepared, and which might have been saved with the aid and assistance of such counsel.

*Seventh.* A revision of the tax laws of the State, whereby real and personal property shall be placed upon an equal footing for all purposes of taxation.

This subject was elaborately presented in the last annual message, and the arguments there urged need not be repeated here. The duty of the Legislature in the premises seems plain and unmistakable.

*Eighth.* A measure providing for a plain enumeration of the inhabitants of the State.

This is clearly demanded by the Constitution. It cannot be refused without a violation of the Constitution. The provisions of that instrument requiring a simple enumeration of the inhabitants every ten years, upon which to base an apportionment, are as obligatory and as essential of fulfillment as are those which direct that a Constitutional Convention be now held. One requirement can be refused as well as the other. The fulfillment of both is alike demanded by every consideration of honor and good faith.

The Constitution does not exact a census. An enumeration, and that alone, is all that it directs. The word "census" cannot be found in the Constitution. The failure of previous Legislatures to direct a plain enumeration—and nothing else—cannot be justified. It admits of no apology or excuse. The constitutional duty is not performed by exacting something which the people do not want, to-wit: a census or collection of elaborate statistics of no practical value—and which the Constitution does not require—and incorporating and confusing it with an enumeration measure, and refusing to pass any thing else.

What the people desire and have the right to demand is a simple enumeration, which will only cost them the sum of \$80,000 or thereabouts, rather than an elaborate and complicated census which it has been demonstrated would cost them the sum of over \$400,000.

The question is a simple one, and it cannot be made clearer by reiteration.

This constitutional duty neglected or refused in 1885 can be performed now. This is common sense—it is in accordance with precedents, and the principle involved has been adjudicated by the courts. No good reason exists why the present Legislature should not perform its plain and bounden duty in this regard. No party can long retain power which refuses a fair enumeration of the people, solely in order to prevent an honest reapportionment of the State. Political control may be retained by such methods for a time, but sooner or later the wrong will be righted. If this Legislature does not assume the honor and credit of doing it, some other Legislature, in the near future, surely will.

*Ninth.* The creation of a commission to revise the charter of the city of New York.

This is recommended as preferable to a renewal of the attempts which are annually made to secure needed amendments by piece-meal. Instead of such usually futile efforts at reform, there should be a systematic endeavor to perfect a new and revised charter, carefully prepared and well considered, which shall absolutely guarantee to that city complete local self-government.

The administration of the city government should be divorced as much as possible from the State government. There should be essentially home rule in reference to strictly local affairs.

The necessity for a revision of the city charter, in order to accomplish such desired results, is conceded. The mayor should be vested with more extensive powers; the various departments should be mainly single-headed; the terms of office of such department officials should be co-extensive with that of the mayor, and no longer; the mayor should have the absolute power of removal, for cause, of all department officials appointed by him, and such removal should not be subject to the approval of the Governor; many offices now

appointive should be elective, and the people should be more thoroughly trusted in the management of their own municipal affairs.

If powers are sometimes abused, it does not follow that they should be wholly withdrawn. A proper form of municipal government should be established, to which there should be given a steadfast adherence. The fact that bad men are occasionally elected furnishes no argument for the changing of a system to which there is otherwise no objection.

The authorization of the appointment of a competent commission, limited in number, but composed of former mayors, corporation counsels, comptrollers, or others familiar with the city government, together with a few leading citizens of each party, and intelligent representatives of all classes and interests, to frame and report a new charter, would unquestionably lead to the preparation of an improved and reasonably satisfactory one, and would be a progressive and practical step in the cause of municipal reform. It is, of course, understood that the commission so appointed should submit its report to the Legislature for adoption.

The difficulty is that heretofore there has been altogether too much vague talk of reform, and too many elaborate theories have been advanced with little or no practical effort to accomplish any thing of real benefit to the city. It is submitted that the creation of a charter commission is something practical and worthy of immediate adoption.

*Tenth.* The abolition of the Regents of the University, and the transfer of most of their powers to the Department of Public Instruction.

*Eleventh.* The abolition of the State Board of Charities, and the concentration of its powers in a single officer.

*Twelfth.* The abolition of the State Board of Health, and the vesting of its powers in one officer.

The last three measures (numbered tenth, eleventh and twelfth) were fully discussed in last year's message, and the reasons for their enactment fully set forth. It seems unnecessary to repeat the arguments then presented. It is sufficient to say that the essential object sought to be accomplished by each of said measures is the same, namely, the proper concentration of power upon a single official in whom the full responsibility for official action should vest. The unification of the supervision of the educational interests of the State, involved in the abolition of the Regents, is especially desirable.

It is one of the great defects or evils in the present system of the discharge of public duties by large bodies or boards of officials, that there is no one who is personally, individually or solely responsible for whatever action is taken. A division of responsibility naturally begets looseness of administration. It is believed that power and responsibility should be united, and go hand in hand, and that thereby the efficiency, usefulness and economy of the public service will be greatly promoted.

*Thirteenth.* An enabling act for the purpose of enforcing that provision of the Constitution which declares that: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind."

Much legislation has been heretofore proposed, but none has ever been actually perfected to carry out this constitutional guaranty of religious freedom. There should be enacted whatever proper measure may be essential to fully and entirely secure the salutary objects intended to be accomplished by the provision of the Constitution above quoted.

*Fourteenth.* An amendment of the criminal law by providing for its more speedy enforcement in cases of murder in the first degree, by allowing an appeal directly, or in the first instance, from the Court of Oyer and Terminer to the Court of Appeals.



*Fifteenth.* An act limiting, regulating and restricting the power of corporations in the issue of stock and bonds.

The manner in which corporations under existing laws are permitted to issue and place upon the market stock and bonds, representing little or no valuable consideration or equivalent actually paid in, and which, although not legally, yet, in effect, are a fraud upon the corporations as well as an imposition upon the purchasers and the public — presents a crying abuse and loudly calls for legislative interference.

*Sixteenth.* A general law providing specially for the incorporation of trades unions.

#### CONDITION OF THE STATE.

##### *Finances.*

The condition of the finances of the State is gratifying. The debt has been reduced \$134,650 during the past fiscal year, by the payment of \$100,000 Niagara Reservation bonds and \$34,650 Canal bonds. On the 30th day of September, 1886, the total funded debt was \$9,327,204.87, classified as follows :

General fund (Indian annuities) .....	\$122,694 87
Canal debt .....	8,304,510 00
Niagara Reservation bonds .....	900,000 00
	<hr/>
	\$9,327,204 87
Aggregate Sinking Fund .....	5,051,073 82
	<hr/>
Total debt unprovided for .....	<u>\$4,276,131 05</u>

The increase of the annual expenses required for the government of the State is a matter for serious consideration.

While the tax rate for the fiscal year is  $2\frac{9}{10}$  mills and that of last year was  $2\frac{9}{10}$  mills, there was in fact no reduction of taxation, as the taxes levied last year amounted to \$9,160,405.11, and those of this year to the sum of \$9,512,812.91, showing an increase of \$352,407.80, and this, notwithstanding the fact

that not a dollar was appropriated toward the completion of the Capitol, and the amount necessarily required to prevent the prisoners in the State prisons from being kept in idleness was refused, and several other equally meritorious appropriations, demanded by the best interests of the State at large were rejected, while local appropriations, in which particular localities were specially interested, were granted with exceeding liberality, and to such an extent that I felt compelled to withhold my approval from items, mainly of that character, amounting in the aggregate to the sum of \$326,747, which, if they had not been disapproved, would still further have swelled the taxation of the present fiscal year.

The exercise of a wise economy in all the departments of the State government is imperatively demanded. The expenses of the Legislature are annually increasing, augmented by long sessions, which are occasioned in great part by the vast volume of local and special legislation enacted, much of which, it would seem, might well be avoided or prevented by the passage of general laws.

### *Taxation.*

During the past few years additional schemes of taxation have been adopted which have proved successful and brought new sources of revenue to the treasury. These are the Corporation Tax Law, whereby a direct State tax is laid upon certain corporations, the amount received from this tax alone during the fiscal year being the sum of \$1,376,061.44; the tax on collateral inheritances under the act of 1885, which realized the sum of \$84,128.92 during the fiscal year; the special tax on the organization of corporations, which only went into effect on April 16, 1886, and from which was received, up to September 30, last, the sum of \$53,600.06, and up to this date the sum of \$48,061.77 additional, making a total of \$101,661.83. Last year an act was passed which went into effect on May first,

whereby a small sum was required to be paid for the benefit of the State by each notary public upon his acceptance of the office, and there has been already realized from this source alone the sum of over \$4,300, and it is estimated that this special tax will annually produce not less than \$25,000, being more than sufficient to pay the entire annual expenses of the Executive Department.

It would seem to be desirable that other and new methods of raising revenue should be devised, in order to relieve the people from the burdens of increased direct taxation. While the times are slowly but steadily improving, our tax payers feel keenly the necessity of continued retrenchment, and every possible reduction of taxation will be greatly appreciated at the present time.

Another form of special taxation has been suggested, which is to require a specific tax to be paid upon all contracts for the sale of stocks, or bonds of corporations, or for the sale of petroleum, drugs, cotton, tea, coffee, pork, grain and other produce, which contracts are popularly known as the transactions of "bucket shops," so called, wherein such property so assumed to be sold or purchased is not understood in fact to be sold or purchased or intended to be transferred or delivered, but the transactions are in effect, though not in form, bets or wagers upon the future market prices of such property. These transactions are immense, and are increasing in amount throughout the State, and, being difficult to prevent or to control by law, they could be restricted to some extent by being subjected to a special percentage tax, graded in proportion to the amount of the operations, and could be made to yield a handsome annual revenue to the State. Such a species of taxation would work no injustice to any legitimate business, and those who engage in such purely speculative and non-productive methods of obtaining a livelihood can easily afford to liberally contribute toward the expenses of the gov-

ernment of the State which protects or tolerates their peculiar vocation. It need hardly be stated that the legitimate business transactions of any regular broker, banker or commission merchant are not intended to be included in this suggestion for taxation, nor is it desired that they should be affected by the proposed legislation.

It is submitted that it should be the effort of the Legislature to devise means to lessen the present burden of taxation upon real estate, and, among other ways, by providing for the taxation of that species of property which now almost entirely escapes assessment, to-wit: The indebtedness of corporations, joint-stock companies and associations, represented in the scrip, bonds or certificates of indebtedness issued by such bodies, and the imposition of a special tax thereon to be fixed by law and to be collected from such organizations by the Comptroller of the State. This plan is believed to be a simple but effective method of reaching a class of property heretofore wholly untaxed as against the bodies issuing the evidences of indebtedness mentioned, and practically not taxed at all as against any one, under the present defective method of taxation, whereby personal property so largely escapes all taxation. It is, of course, understood that the details of the bill should provide against the possibility of any double taxation, which can easily be done.

The people will welcome any relief to taxation upon real estate, and approve any fair proposition the tendency of which is to equalize the burdens of taxation, and to compel personal property to bear its proper proportion of the expenses of government

The assessed valuation of the personal property of the State, in 1875, was over four hundred and seven millions of dollars, and in 1885 it was only three hundred and thirty-two millions, showing a decrease in ten years of seventy-five millions. In one year alone — from 1884 to 1885 — there was a decrease of

over thirteen millions. It is evident that this decrease has been upon the assessment-rolls alone, and that the value or amount of personal property in this State has not, in fact, decreased, and demonstrates that our tax laws are either grossly defective, loosely or fraudulently executed, or shamefully evaded.

A glance at the situation in other States and the comparisons afforded thereby furnish ample evidence upon this subject.

In 1880 the assessed valuation of personal property in Massachusetts was over four hundred and seventy-three millions, being over one hundred and fifty-one millions more than the valuation of personal property in this State in that year. In the same year the personal property in Ohio was assessed at over four hundred and forty millions of dollars, being one hundred and eighteen millions, or thereabouts, in excess of the assessment of the personal property in our State in that year. In Ohio the personal paid about forty-two per cent. of the State tax. In Massachusetts it paid about forty-two and sixty-one one-hundredths per cent.; in Indiana, with a personal valuation of one hundred and eighty-nine millions, or thereabouts, it paid about thirty-five per cent.; in Illinois, with a personal valuation of about two hundred and eleven millions, it paid about thirty-seven per cent., while in the great State of New York, embracing the city of New York, wherein is believed to be concentrated and possessed a large share of the wealth of the country, the personal property, in the year 1880, paid but about fourteen per cent. of the State tax, and in the year 1884 only about eleven and forty-seven one-hundredths per cent. of such tax. The remedy for these glaring inequalities was distinctly pointed out in the message of last year.

#### THE CONSTITUTIONAL CONVENTION.

The people at the recent election having voted in favor of the holding of a constitutional convention, it becomes the

duty of the Legislature, at this session, in obedience to the mandate of the Constitution (art. XIII, sec. 2), to "provide by law for the election of delegates to such convention." The number of delegates of which such convention shall be composed, their qualifications and compensation, the manner of their election, and the territory or districts which they shall represent, the time of their assembling, and other important matters of detail are not laid down or prescribed in the Constitution itself, but are left to the discretion of the law-making power, to be manifested and declared in a statute now to be enacted. It is essential that these details be not hastily or lightly determined, but only after most careful and deliberate consideration, as the ultimate success of the work of the convention may much depend upon the manner of the disposition of these preliminary questions.

The convention of 1821 was composed of one delegate elected from each Assembly district in the State. The convention of 1846 was chosen in the same manner and consisted of one hundred and twenty-eight members, corresponding to the number of Assembly districts. The convention of 1867 consisted of one hundred and sixty members, of which one hundred and thirty-two were elected from Senatorial districts (four from each district), and thirty-two were elected by the State at large, no elector being permitted to vote for more than sixteen delegates, the effect being that the delegates-at-large were thereby equally divided between the two principal political parties of the State.

While it is desirable that the convention be a sufficiently numerous body to enable all parties and classes, as well as all the varied and diverse interests in the State to be represented, or have a fair opportunity for representation, it may be questioned whether a somewhat smaller body than the last convention may not be preferable and tend to insure more expeditious, efficient and satisfactory work. A convention of limited

size, if chosen upon such a basis as to be thoroughly representative in its character, can as well express the sentiments of the people as a larger one, and seems in every respect more desirable. A smaller body tends to prevent tedious and unreasonable debate — can be more economically conducted, and can more readily accomplish practical results, while at the same time it is enabled to act with greater deliberation.

The last convention, by reason of its numerous membership, was manifestly a cumbersome and unwieldy body, inclined to interminable discussion, and disposed to devote much time to the consideration of innovations of every conceivable character. Its sessions continued for almost nine months, and it cost the tax payers of the State the sum of \$385,531, and its work was, finally, mainly rejected by the people.

The Constitutional Commission of 1872, composed of thirty-two members, sat but fourteen weeks, and cost only the sum of \$24,916, and its work was substantially all approved by the people.

It is believed that, so far as is possible, the various interests in the State should be represented in the convention, which should include not only the adherents of the two principal political parties, but the prominent representatives of the prohibition, license, woman suffrage, labor reform and anti-monopoly sentiment, as well as those identified with any other special interest of importance desiring changes in the organic law of the State, thereby rendering it emphatically the people's convention as contemplated by the Constitution. For this purpose it is deemed advisable that as many delegates be elected from the State at large as may be practicable; and experience seems to show that this method will also be more likely to secure a better class of delegates than the district system.

It is suggested that the convention should consist of one hundred and ten delegates, of which sixty-eight should be elected by districts, two from each congressional district, and

forty-two should be elected from the State at large, no elector being permitted to vote for more than fifteen delegates, and the forty-two delegates receiving respectively the highest number of votes should be declared elected. This would probably secure fifteen delegates-at-large to each of the two principal political parties, leaving twelve delegates-at-large to be selected by other interests, and leaving the district delegates to be elected as the electors of the various districts should determine—either according to existing political divisions, or upon a non-partisan basis, or otherwise. If it should be deemed desirable to further adopt the system of minority representation, it might also be provided that in voting for district delegates each elector should vote for only one delegate, and the two candidates receiving respectively the highest number of votes in any district should be elected.

It is submitted that the district delegates should be selected by Congressional, rather than Senatorial or Assembly districts, because the last apportionment made in the State (which was in 1883) related to Congressional districts and was based upon the Federal enumeration of 1880, while there has been no apportionment of Senatorial or Assembly districts since 1879, which was based upon a State enumeration made in 1875—over eleven years ago—and it is admitted that the population of the several districts has greatly changed since that period.

It is assumed that in a matter of such vast consequence and importance as the revision of the Constitution, there will be no endeavor to obtain any supposed political or partisan advantage by a refusal to permit the people of the State to be fairly and equitably represented in their own constitutional convention according to the last enumeration and apportionment of its inhabitants.



## A STATE GAS COMMISSION.

There has been much complaint of late years in regard to the alleged abuses and extortionate charges on the part of gas companies. Such complaint has not been confined to any particular section of the State, although it has principally come from the city of New York; and the general desire to remedy it in that city found expression in several measures which were passed by the Legislature last year, three of which were approved, but one of which I felt compelled to veto.

It is understood that the enactments which were approved have given a considerable measure of relief to the gas consumers of the city of New York, without, so far as can be discovered, doing injustice to the companies. The bill which was disapproved was not only seriously defective in many respects, but it established a special gas commission for that city alone, rather than a State commission, and was, therefore, clearly objectionable. It also conferred upon such local commission certain extraordinary and dangerous powers.

It is suggested that the public demand for the correction of any abuses which may still exist, and which have not already been entirely remedied, may be met by the passage of a measure, not local in its character, but providing for the appointment of a State commission, with power, under reasonable restrictions, to regulate and control the management of all gas companies throughout the State, to investigate all overcharges and other complaints; to report its recommendations to the Legislature, and, in general, to possess over gas companies powers somewhat similar to those which the Railroad Commission of the State has over railroad companies; such commission to be maintained without cost to the State, but at the expense of the gas companies, in a manner analogous to that in which the Insurance Department and the Railroad Commission are now supported. It is believed that such a

measure, carefully perfected in its details, as its importance requires, and aiming to do exact justice between the companies and the consumers, and protecting each in a fair and equitable manner would meet with no opposition from any source, and relieve the Legislature from the annual clamor for special legislation, and at once afford a satisfactory solution of many difficult questions pertaining to this subject.

The propriety of framing the proposed measure, so as, to include within its provisions all electric and other lighting companies, is also suggested for your consideration.

#### THE INTERESTS OF LABOR.

Your attention is especially invited to the subject of the relations of labor to the State, and it is hoped that it may receive such wise and judicious consideration as its merits and the increasing interest which its discussion everywhere evokes, would seem to demand at your hands.

It is useless to shut our eyes to the fact that there seems to be a growing discontent among the industrial classes, at least in certain portions of the State, and especially in our large cities, and it is the province of those intrusted with authority to endeavor to alleviate and pacify it.

It is not believed that there exists any desire on the part of intelligent workingmen to overturn the foundations of society or to imperil the peace and good order of the State. Their true interest lies in the preservation of our free institutions, in the security of property and the protection of chartered, as well as individual rights. They seek the correction of the wrongs of labor, but not by violence, anarchy, agrarianism or communism. They naturally and properly desire to benefit their condition in life, impelled by honest purposes and an enlightened self-interest, inherent in every enterprising and progressive man. They have no form of government or organization of society to suggest, inconsistent with the welfare of all the peo-

ple, nor do they demand in their behalf any vague and incomprehensible schemes of Utopian progress.

What the thoughtful workingmen of the State want is not glittering generalities or fine-spun theories, but practical measures of relief. It should be our aim to study their wants, to respectfully and attentively listen to their complaints, to dispassionately discuss their proposed projects, and in a kindly spirit to intelligently distinguish between their real and their fancied grievances. It is believed that a more generous recognition of their claims to public positions would not only familiarize them with the duties and responsibilities of public trusts, and quicken their realization of the difficulties involved in attempting to furnish a panacea for all the evils incident to society, but would as well tend to bring about more harmonious relations between capital and labor, and between all classes of the people.

It is the growing impression, founded upon much truth, that offices are too frequently sought by and bestowed upon wealthy men who obtain them by the lavish and improper use of money rather than any real merit of their own. This fact discourages men of moderate means from seeking official honors, and creates the conviction in the minds of workingmen that public positions are not within their reach.

The propriety of lessening the hours of the daily labor of workingmen, so far as the same can be properly controlled or regulated by law, is commended to your careful consideration.

It is the true policy of the State to elevate and dignify labor, not by exacting the greatest amount of toil that the laboring classes are capable of furnishing, but by legitimately encouraging every honest effort to improve their condition, and requiring that only reasonable hours of labor shall constitute a day's work, for which full and adequate compensation should be received.

The fact should be recognized that in all branches of business, and in all the activities of life, there is a growing tendency toward greater relaxation from toil, and more recreation, especially in certain seasons of the year. It may be safely asserted that where ten persons took a vacation during the summer months fifteen years ago, hundreds do so now, and yearly the number is increasing. While merchants, bankers, ministers, lawyers, physicians, teachers and other business and professional men take long vacations in summer or winter, and sometimes in both, such absences are usually impossible on the part of mechanics and workingmen, and any relief to them must come, if at all, in reduced hours of labor and more recreation at their own homes. Labor-saving machinery, the appliances of science, and the general improvements of the age, coupled with the genius, skill and intelligence of our artisans and laborers, have rendered unnecessary the constant and exacting toil and the great volume of labor which characterized the employments of our forefathers, and also have enabled us to dispense with much of the unremitting exertions which seemed to be required even a few years ago. The customs and habits of the people are changing with the growth of the country, and all alike should receive their just share of the benefits and advantages which arise from the changed condition of affairs and from the results which mark the progress of civilization.

The dignity of labor can best be preserved by insisting that labor shall be better compensated. Increased compensation will furnish greater facilities for education, more comfortable homes, more contented families and better opportunities for recreation, as well as tend to develop nobler aims and purposes on the part of workingmen, greater interest in the peace and prosperity of the State, and higher ideas of citizenship.

Poverty is one great source of discontent. Overwork, poorly recompensed, is another. It is, therefore, suggested that the

demand of wage-workers for shorter hours and increased compensation presents a subject entitled to respectful consideration at your hands, to the end that such legislation may be enacted as may best aid the accomplishment of such benign results.

I had the honor of saying in my first annual message, in 1885, that: "It is evident that labor does not receive its fair proportion of the rewards which industry and honesty entitle it to share," and the sentiment will bear repetition. To provide a remedy for this inequitable condition of affairs, in so far as it can be corrected by the passage of just and wholesome laws, may be deemed the duty as well as the pleasure of the Legislature.

Whether or not any reduction of the hours of daily labor is practicable or enforceable by statute, there can be no question as to the power of the Legislature to declare certain days to be legal holidays, and it may be advisable to establish by law additional holidays for the benefit of all, and especially for those who daily perform arduous and exacting labor, and in that view to designate every Saturday, or the half-day of every Saturday, as legal and public holidays or half-holidays.

In many branches of business, especially in our large cities, every Saturday afternoon is practically regarded as a holiday, as active business substantially ceases at noon of that day, and there would seem to be no reasonable objection to extending this custom so that it should be legally applicable to all kinds of business and occupations, and afford a much-needed relief to a large class of deserving people. If, for any reason, a half-holiday is legally or otherwise objectionable, the whole of every Saturday or every other Saturday could be thus set apart, and such objections obviated.

In any event, I recommend that the first Monday in September in each year, or some other day that may be deemed appropriate, may be made by statute a legal holiday, to be known as "Labor Day," and to be observed by all the people

as a day of festivity and recreation, and devoted especially to the interests and welfare of labor.

I commend to your favorable consideration some measures looking to the greater safety and better regulation of the tenement-houses in our large cities. An exhaustive investigation of the tenement-house system in New York city, in the year 1884, revealed the wretched condition of those who, from poverty, are forced to occupy dilapidated and ill-ventilated buildings, into which they are crowded by the criminal cupidity of the owners. This investigation resulted in the suggestion of valuable remedial legislation, but so far no bill has been passed and no relief secured. The helpless condition of these people, who are unable to prepare elaborate memorials praying for relief, and in whose interests no persistent counsel appear to urge legislation, should enlist the earnest and early efforts of the present Legislature.

There are many reasons which may be urged why the law in regard to the recovery of damages in case of the death of a person, caused by the negligence of another person or of a corporation, should be amended by removing the present restriction on the amount which may be recovered and increasing the same from \$5,000 to \$10,000.

It must be admitted that it is difficult to see why a party injured through the negligence of another should be permitted to recover full compensation in case he survives the injury, but in case of his death his wife and family or personal representatives should be restricted to the amount of \$5,000.

The statutes of the State should make no unfair discrimination against workingmen. Whatever sections of the Penal Code there are which, by a fair or even by a strained or harsh construction, can be interpreted to prevent laboring men from assembling, combining or agreeing in a peaceable and orderly manner, to act unitedly in the matter of wages, working or not working, patronizing others or not patronizing

them, and otherwise by their joint action illustrating the power of union, and protecting and enforcing their inherent and natural rights—such sections, if they are capable of being construed so as to adjudge such actions to be “conspiracies,” should be promptly modified. The public do not need the alleged protection of such objectionable laws, and workingmen should not be permitted to suffer under such restraints in their well-intentioned efforts to promote their welfare.

The laws in reference to the collection of wages should be amended by giving the workingmen the same remedies and facilities for the collection of their wages as are now afforded to women by recent statutes.

The propriety of authorizing the appointment of a special labor commission to examine the whole subject of the grievances of labor; to hear complaints and suggestions; to take evidence, if deemed necessary; and to recommend measures for adoption to this or the next Legislature, having for their object the promotion of labor interests and the welfare of the industrial classes, is commended to your thoughtful consideration.

The intelligent and deliberate determination and report of such a tribunal would unquestionably devise many desirable measures of relief, and remedy numerous existing grievances, and, at the same time, relieve the Legislature from the passage of many crude and imperfect bills relating to labor subjects which are annually presented for their consideration.

#### ADULTERATION OF FOOD.

Our statute books for many years have borne laws designed to prevent the manufacture and sale of adulterated food and drugs. Within a few years particular attention has been directed to specific branches of the subject, and enactments have been made in relation to milk, butter, cheese, confectionery, hops, vinegar and canned goods. Those laws should be

enlarged so as to include numerous other articles of consumption. The prevention of the sale of impure and fraudulent articles of food is of the greatest importance, not only to the health of all, but as well to the commercial prosperity of the farmers and merchants of our State. Every person is a consumer and so interested on the score of health or economy, and on the latter account particularly those wage-earners, the larger part of whose limited income is necessarily spent for food. The thousands of honest producers and distributors are also concerned, or should be, on the score of legitimate protection to trade.

In carrying out such laws as we have upon this subject, good work is done by various departments of the State government and by the local boards of health in several of our cities, but some enlargement in the scope and effectiveness of these laws can well be made. Other countries have brief and simple enactments, which are believed to afford their people protection in a great measure from injurious ingredients in food, or at least to afford purchasers knowledge, by means of proper labels or conspicuous notices, of the composition and quality of the goods purchased.

I recommend that such laws as we have relating to the adulteration of food and drugs shall be amended where necessary, and be brought together in one general statute, and that power to enforce such a statute shall be vested in the State Board of Health, or in such single official as may be substituted for it, and I especially recommend that there be incorporated therein some plan for the effective enforcement of such a law by the combined action of local boards of health throughout the State.

#### ARBITRATION OF LABOR DISPUTES.

The Legislature last winter very wisely inaugurated a system of arbitration as a means of legally settling labor disputes.



This action was taken at the request of the labor organizations of the State, and a bill was passed entitled "An act to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a State Board of Arbitration," which measure met with prompt approval, and has since attracted widespread attention.

Under its provisions a competent State board was appointed by the Executive, which was unanimously confirmed by the Senate, and although the law has been in operation but a little over six months, and while the board at the start met with some obstacles in its work, as those for whose benefit the measure was specially enacted were somewhat suspicious of it, and reluctant to avail themselves of its beneficent provisions, yet latterly, as the law has become better understood and the true functions of the board have been comprehended and appreciated, its services have been repeatedly sought, and it has amicably, and with reasonable satisfaction, adjusted many serious and important labor differences, and the wisdom of its creation is steadily becoming more apparent.

It is to be regretted that, by the terms of the law, the existence of the Arbitration Board is limited to one year. It is apparent that this period is not sufficient to afford a satisfactory test of the real merits of the measure, and there now seems to be a general desire, particularly in labor circles, that the commission should be extended for a term of years in order that the advantages of this system of settling labor difficulties may be fully demonstrated. In view of the conceded and growing importance of the subject, I am inclined to recommend that such course be adopted.

#### MANUAL TRAINING IN SCHOOLS.

Not the least important element in the present status of the labor question is the apprenticeship and education of the

growing youth, upon whose training and fitness for action so much of the future, both in national welfare and individual well-being, depends. The decadence of apprenticeship is a fact full of serious and far-reaching consequences, and it is in accordance with a wise policy to seek a remedy. Apprenticeship laws are still extant on the statute books, but investigation proves that, to all intent and purpose, they are practically a dead letter. In the march of time the old apprenticeship system has been left behind. As machinery has advanced, apprenticeship has declined.

Any inquiry into the present and future prospects of labor necessarily involves some inquiry into education, its principles and its purposes. Reliable statistics prove that a large majority of all skilled workmen in this State are of foreign birth, but few native-born Americans being found in any of the more prominent industries, a fact full of significance and one that furnishes food for the most serious reflection; and without attempting, at this time, to enter into any general discussion of our present public school system, there is, nevertheless, a conviction that it is largely responsible for our present condition in this respect. Education with us is not the privilege of the few but the right of the many, and the changes in the course of trade and business, in mode of travel and transmission, in our arts and manufactures generally, all suggest the necessity of changes in our methods of education. Our literary education, so to term it, comes far short of our needs. It seems hitherto to have been with a view to rudimentary general knowledge for commercial and professional pursuits, there being no adequate provision for the particular wants of the artisan and day-wage-earner. There is an evident growing sentiment that public school education should not be limited to what is called "book-learning," but that there should also be some preparation for that labor to which a vast majority in all countries are destined. In our present indus-

trial conditions any system of public education that does not fit our youth to earn a living is a failure. It is not believed that the present system, successful as it has been in the past, is sufficient for the future needs of our American youth; and I would therefore recommend making manual training, within certain limits, a part of the public school system, certainly in the cities and larger towns of the State, and also urge the necessity of a new and stringent apprenticeship law to meet the requirements and wishes alike of manufacturers and organized labor; a law that will be in harmony with our changed industrial conditions, and in sympathy with that public sentiment which demands that our youth of both sexes shall be given an opportunity to compete with the imported skilled labor.

#### PROTECTION FROM RAILROAD FIRES.

The frequency of fires caused by locomotive engines, and the injuries sustained thereby, to the property along the lines of the railroads of the State, and the inadequacy of existing law to properly protect and indemnify the owners of such property, render the passage of some remedial statute in relation thereto peculiarly appropriate.

Under the decisions of the courts of our State, railroad companies are not now liable for damages by fire set by their locomotives, unless it can be proved that they are guilty of negligence in the construction or operation thereof. This proof it is oftentimes very difficult or impossible to furnish, and it is believed that the liability should not depend upon that question, but that a sound public policy requires that they should be absolutely liable for all such damages, and that a statute to that effect should be enacted for the protection and indemnity of our farmers and others owning property on the route of railroads.

It is understood that such a statute as is here proposed has been in operation in Massachusetts since 1840, and the pro-

priety of its enactment in this State is indorsed by the Board of Railroad Commissioners.

The statute should provide that the railroad companies be regarded as having an insurable interest in the property upon their routes, and be permitted to procure insurance thereon in their own behalf, and thus amply protect themselves.

#### ABOLITION OF ANOTHER UNNECESSARY OFFICE.

In addition to those offices, the abolition of which was recommended by me last year, which recommendations I have reiterated, there is the office of "State Agent for Discharged Convicts," which it is believed can, with advantage, be done away with. The duty of the State Agent is to visit the various penal institutions once in each month, to confer with those convicts who are about to be discharged the following month, for the purpose of inducing them to proceed immediately to suitable homes and places where employment will be provided for them, and to furnish them with clothing, transportation, tools or money. In actual practice only the three State prisons receive the slightest benefit of this law.

The sum appropriated for the purposes of the State Agent is seventy-five hundred dollars, of which sum it appears he receives as salary and for expenses thirty-five hundred dollars, thus leaving four thousand dollars for distribution to discharged convicts. In other words, it cost the State thirty-five hundred dollars to distribute four thousand.

From investigation I am satisfied that the duties of the State Agent can be better performed by the wardens of the prisons without any additional expense, and that thereby discharged convicts will receive the full benefit of the appropriation nominally made for them, instead of dividing almost half of it with an official whose services are superfluous, to say the least.

## CONCLUSION.

The reports of the various departments of the State will soon be submitted to you, and your careful attention is invited to them for details relating to their work, which will be found there presented in much better form than is practicable in an annual message. The omission to refer to these departments, respectively, is not to be construed as due to any lack of appreciation of the importance of their work, but is because of the desire that this communication shall have at least the merit of brevity.

The consideration of the suggestions that have already been made is sufficient to occupy a session of reasonable length. If the Legislature shall earnestly seek to avoid unnecessary local and special legislation, and give its attention to the general matters of importance here presented, even if but a small proportion shall be finally perfected into laws it will make an honorable record and the session will be a memorable one in the annals of the State.

DAVID B. HILL.

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INTER-STATE EXTRADITION—CIRCULAR LETTER  
SUGGESTING A CONFERENCE OF GOVERNORS  
TO DEVISE A UNIFORM SYSTEM OF PRACTICE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *January 31, 1887.* }

SIR.—I am directed by Governor Hill to communicate with you as to the propriety of joint action by the Executives of the States, having in view the adoption of a uniform system of regulations and practice in relation to inter-State extradition.

It is probable that in many instances of fugitives from justice, the ends of justice are frustrated by reason of the great diversity of the regulations of the different executive offices, while in other cases needless delays and increased expenditures are the result.

Governor Hill believes that a beneficial reform in this important branch of criminal law could be speedily effected by the Governors of the States in the adoption, by joint action, of a common method of procedure. This action could be accomplished through some representative of each Governor, chosen with reference to special knowledge of the subject, at a meeting to be held at some convenient place.

If you concur in these views, Governor Hill would be pleased to have you unite with him in the call for a general meeting of representatives of all the States, to be held in the near future, at some time and place to be designated by him.

A like communication has been sent to the Governors of Vermont, Connecticut, New Jersey and Pennsylvania, the other States adjoining New York.

I am, very respectfully, your obedient servant,

WILLIAM G. RICE,  
*Private Secretary.*

Hon. OLIVER AMES,  
*Governor of Massachusetts.*

[See date of July 12 for joint letter of Governors on this subject.]

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CERTIFICATE OF THE ELECTION OF U. S. SENATOR  
HISCOCK.

STATE OF NEW YORK.

By DAVID B. HILL, *Governor of the State of New York.*

IT IS HEREBY CERTIFIED, *That* at a joint assembly of the Senate and Assembly of the State of New York, held in the

city of Albany, on Thursday, the twentieth day of January, one thousand eight hundred and eighty-seven, in pursuance of the laws of the United States of America, FRANK HISCOCK was duly elected as a Senator to serve in the Congress of the United States, from the State of New York, for the term of six years from the fourth day of March, one thousand eight hundred and eighty-seven.

In testimony whereof, the Great Seal of the State is  
[L. s.] hereunto affixed.

Witness my hand, in the city of Albany, the fourth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

DAVID B. HILL.

THE FLEISCHMANN CLAIM FOR INDEMNITY—  
ORDER DIRECTING PAYMENT.

STATE OF NEW YORK,  
EXECUTIVE CHAMBER.

BEFORE THE GOVERNOR OF THE STATE OF NEW YORK.

*In the Matter of the Application of Charles Fleischmann and others, to be allowed and paid compensation for losses alleged to have been occasioned and suffered by them, by reason of the quarantining of certain stables in their possession, in pursuance of a proclamation issued by the Hon. Lucius Robinson, then Governor of the State of New York, under the provisions of chapter 134, Laws of 1878, entitled "An act in relation to infectious and contagious diseases of animals."*

WHEREAS, A petition has been presented to me by Charles Fleischmann and others, composing the firm of Gaff, Fleischmann & Company, for the audit and allowance of a certain

claim asserted by them against the State of New York, in the sum of \$3,884.88, with interest thereon from March 25th, 1879, based upon allegations by them made as follows, to-wit :

That on or prior to the 13th day of February, 1879, the said petitioners were copartners in the business of distilling, at Blissville, Long Island City, Queens county, N. Y., and were the owners and in possession of stables and premises connected with their distillery, which stables were kept exclusively for let and hire for the stabling of cattle, as a part of and in connection with their business of distilling, and that on the day last aforesaid, under and in pursuance of a proclamation made by Hon. Lucius Robinson, then Governor of the State of New York, issued in accordance with the statute above mentioned, the said premises were seized by the officers of the State, and held in close quarantine from the said 13th day of February, 1879, to and including the 25th day of March, 1879, being a period of forty-one days ; and that, by reason of the acts of the said officers of the State, the said petitioners were deprived of the benefit of the use and occupation, and compensation for the use of said stables, and were in addition subjected to an expenditure of the sum of three hundred dollars for the services of laborers to care for and feed, as well as to prevent suffering among the cattle quarantined in said stables ; and

WHEREAS, I have been attended by the said petitioners and their counsel, and have taken and heard testimony offered by them, the People being represented on said hearing by their Attorney-General, and it appears from the testimony and evidence offered upon such hearing, and papers presented to me in and about said matter, that said claim was heretofore presented for audit to the Hon. Alonzo B. Cornell, then Governor of this State, on or about the 1st day of July, 1880, but was rejected by him upon technical or legal grounds, and not upon its merits ; and



WHEREAS, After the rejection of such claim by the Hon. Alonzo B. Cornell, Governor, the said petitioners began proceedings in the Supreme Court of the State of New York, to obtain a mandamus requiring Alonzo B. Cornell to audit and allow said claim, in an action entitled "The People, upon the relation of Charles Fleischmann and others, *vs.* Alonzo B. Cornell, Governor of the State of New York ;" and

WHEREAS, Such proceedings were had in such action that, on or about the 15th day of March, 1883, the said Supreme Court did issue a mandamus, directed to the Governor of this State, and requiring him to audit and consider the said claim, as provided by law ; and

WHEREAS, It appears that the terms of said mandamus have never been complied with, and that no actual audit or allowance of said claim, in whole or in part, has yet been made, and no part of said claim has been paid:

I, David B. Hill, Governor, having considered all the proofs in the premises,

*Do find*, as matter of fact, that the material allegations in said claim set forth by the petitioners, as to their partnership, their possession of the said premises, the hiring of stalls in such premises to various persons for the stabling of cattle, the quarantining of such premises by the State for the period of forty-one days, to be true.

*And I do also find*, as matter of fact, that, at the time of the taking possession of the said premises by the authorities of the State, there were then stabled therein one thousand and twenty cows, which belonged to various persons other than the petitioners, and that the stabling of each cow as aforesaid was reasonably worth fifty cents per week.

*And I do also find*, as matter of fact, that from and including the 13th day of February, 1879, to and including the 25th day of March, 1879, the petitioners were deprived of the use, occupation, control and compensation for the use

of said premises, and that the sheriff of Queens county and his deputies held full control over such premises under and by virtue of the said proclamation; that during said period of quarantine the cattle stabled upon such premises were slaughtered at various times by the officer and agents of the State.

*And I further find*, as matter of fact, that during said period of quarantine the said petitioners incurred and paid the sum of three hundred dollars for the services of laborers in and about the care and feeding of said cattle and the prevention of suffering among the same.

*I do, therefore, audit and allow*, under the statutes in that behalf provided, the said claim of Gaff, Fleischmann & Co., at the sum of three thousand two hundred and eighty-seven dollars and twenty cents. The petitioners would appear to be entitled to interest upon this amount, but as it seems to be the established practice of the Board of Claims and other departments of the State not to allow interest in such cases, I will follow that rule in this instance.

DAVID B. HILL,

Dated *February 4*, 1887.

*Governor.*

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VETO, SENATE BILL No. 5 — TO CHANGE THE  
NAME OF ST. LUKE'S HOME, UTICA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 7*, 1887. }

*To the Senate:*

Senate bill No. 5, entitled "An act to change the name of St. Luke's Home, in the city of Utica, and to provide for the qualifications and manner of electing its managers," is herewith returned without approval.

The principal portion of this bill relates to and provides for a change of the name of the corporation known as "St. Luke's Home." Its name can be changed without the intervention of the Legislature.

Chapter 322 of the Laws of 1870, entitled "An act to authorize corporations to change their names," as amended by chapter 280 of the Laws of 1876, is ample and sufficient to effect a change in the names of this class of corporations upon application to the courts.

The other portions of the bill are regarded as unnecessary. The statute above mentioned expressly provides that any change in the name of a corporation made thereunder shall not affect or prejudice the "rights or liabilities" of said corporation. The provisions of section 2 of the bill are, therefore, superfluous.

Section 3 contains provisions which are equally unnecessary or unadvisable. The qualifications of the managers and their election are sufficiently provided for in the general act relating to such corporations, and this is special legislation, which I cannot consistently approve.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 9, RELATING TO  
BURIALS IN ONEONTA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 7, 1887. }

*To the Assembly :*

Assembly bill No. 9, entitled "An act to amend chapter thirty of the Laws of eighteen hundred and eighty-five, entitled 'An act to amend, revise and consolidate the several acts relating to the village of Oneonta, in the county of Otsego,'" is herewith returned without approval.



was convicted, such report to be made to me in writing at their earliest convenience.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this twelfth  
[L. s.] day of February, A. D., one thousand eight hundred and eighty-seven.

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,  
*Private Secretary.*

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REPORT OF COMMISSIONERS IN THE MATTER OF  
THE SANITY OF ROXALANA DRUSE.

ALBANY, *February 15, 1887.*

To the Hon. DAVID B. HILL,

*Governor of the State of New York:*

SIR—The undersigned commissioners, appointed by you to examine Roxalana Druse, now confined in the Herkimer county jail under sentence of death, and to report their conclusions as to her present sanity, and their opinion as to her sanity at the time of the commission of the act for which she was convicted, respectfully submit:

That they carefully examined the said Roxalana Druse, and have arrived at the conclusion that the said Roxalana Druse was, at the date of the commission of the act for which she was convicted, and is now, sane.

We have the honor to remain, sir,

Your obedient servants,

JUDSON B. ANDREWS, M. D.

CARLOS MACDONALD, M. D.

LEWIS BALCH, M. D.

VETO, SENATE BILL, NOT PRINTED, TO CHANGE  
THE NAME OF THE PITTSBURGH, LACKAWANNA  
AND NORTH-EASTERN RAILROAD COMPANY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 17, 1887. }

*To the Senate :*

Senate bill, not printed, entitled "An act changing the name of 'The Pittsburgh, Lackawanna and North-eastern Railroad Company' to 'The Central New York and South-western Railroad Company,'" is herewith returned without approval.

There is no objection to this bill except that it is wholly unnecessary. By chapter 322 of the Laws of 1870, certain corporations of the State were authorized to institute proceedings in the courts to change their corporate names. By that act "railroad companies and corporations created by special charter" were excepted from its provisions; but by chapter 280 of the Laws of 1876, the act of 1870 was amended by striking out the exception as to "railroad companies and corporations created by special charter." Hence, railroad corporations are permitted to change their names, under the act of 1870, without the intervention of the Legislature.

DAVID B. HILL.

# VETO, ASSEMBLY BILL No. 84, TO LEGALIZE ACTS OF JUSTICES OF THE PEACE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 17, 1887. }

*To the Assembly:*

Assembly bill No. 84, entitled "An act to legalize the official acts of certain justices of the peace, and authorizing justices of the peace to execute and file official bonds, and to take and subscribe the official oath," is herewith returned without approval.

This act legalizes the official acts of every justice of the peace who has neglected to take an official oath, or to give an official bond, or omitted certain other things required by law to be done, and permits any justice heretofore elected or appointed who has neglected any of such matters so required by law to be done, to do the same within sixty days after the passage of this act.

The first objection to the enactment of this law is, that there is very little, if any, necessity for it. It has been the custom annually, for many years, to pass such a law, but there is really not much actual need of it.

The official acts of a justice of the peace who has been duly elected, and is acting as such, cannot be questioned, collaterally, even though he may have neglected to take an official oath, or to file an official bond. He becomes an officer *de facto* with color of lawful title, and while his official acts may not protect himself, still they are valid in so far as the public or third persons are concerned. This rule is well settled, and hence there is no public necessity for the passage of this law.

The second objection is that the constant passage of such acts tends to encourage looseness of administration among

public officials, and furnishes a pernicious precedent. Every justice of the peace is given to understand, by the annual enactment of such laws, that it makes no difference whether he complies with the law imposing upon him the duty of filing an oath or a bond within the time required by law, or complies with it at all, as the Legislature will surely pass an act the following winter legalizing his acts and permitting him to perform his neglected duty at his leisure, or within what is equivalent, namely, two months' time.

So far as the justices themselves are concerned, they are usually entitled to no such relief. They are encouraged to become careless and indifferent by this very kind of legislation, and omit their plain duty upon the most frivolous pretexts.

So long as the public or third persons do not need the protection of this bill, it does not seem expedient to annually afford an inducement to public officers to neglect their duty. A justice of the peace who is not sufficiently acquainted with the law, or is so indifferent and careless as not to inquire what his duty is in these respects, ought not to be permitted to hold such an office, and the public will not suffer if his acts are not legalized, and he is permitted to retire to private life. By the frequent enactment of these legalizing acts the people become accustomed to think that it is very easy to procure an act of the Legislature, and that it is a trifling matter whether or not the laws of the State are strictly complied with. It is time to cry a halt as to this class of legislation, and this is a favorable opportunity.

DAVID B. HILL.



VETO, SENATE BILL No. 83, TO PROVIDE FOR A  
POLICE JUSTICE, ETC., IN THE VILLAGE OF  
HERKIMER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 18, 1887.* }

*To the Senate :*

Senate bill No. 83, entitled "An act to provide for the election of a police justice and police constables in the village of Herkimer," is herewith returned without approval.

This is a special act providing for the election of a police justice and police constables in the village of Herkimer. That village was not incorporated under a special act, but under the general law for the incorporation of villages, passed April 20, 1870.

The Constitution of the State forbids the passage of any act for the incorporation of villages, but provides that all villages hereafter created shall be organized under this general law. This bill violates the spirit of the Constitution by enacting peculiar provisions which would be applicable alone to the village of Herkimer, and not to the other villages of the State.

The bill is virtually an amendment to the village charter, and an amendment cannot well be made where it would be improper to pass an original special charter. If the village of Herkimer is entitled to such special legislation, it follows that every other village in the State similarly situated is entitled to the same kind of legislation.

It is conceded that by the provisions of the general act of 1870, especially as amended by chapter 514 of the Laws of 1875, the citizens of Herkimer can accomplish substantially all the purposes intended to be accomplished by this bill, if they

so desire. It seems, however, to be easier for them to apply to the Legislature and obtain a special act, rather than proceed under the general act. If the general law is defective in any manner, or does not answer all the purposes required, then the general law itself should be amended so that all the villages in the State incorporated under it may have the benefit of these new or desirable provisions.

There are too many villages in the State to warrant special legislation for each one of them every time that it imagines that it desires a change from existing methods. It is represented to me that this bill is favored by the best citizens of Herkimer, and I have no objection to its provisions, except that it is special legislation of the worst kind. The time of the Legislature ought not to be taken up with such matters. The attention of the legislators should be given to the enactment of general laws applicable to the whole State. It is a very easy matter to frame a general law which will answer all the purposes intended to be accomplished by this bill, if in any respect the present law is not adequate.

I regret exceedingly to differ with the Legislature upon these matters, but I am resolved, so far as lies in my power, to prevent a repetition of the volume of special legislation which has heretofore unnecessarily incumbered our statute books.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 42, DIRECTING THAT SEWERS BE CONSTRUCTED IN CHURCH STREET, SARATOGA SPRINGS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 23, 1887. }

*To the Assembly :*

Assembly bill No. 42, entitled "An act to authorize the construction of sewers in Church street in the village of Saratoga Springs," is herewith returned without approval.

It will be observed that the title of this bill announces it "An act *to authorize* the construction of certain sewers," etc., etc., while the first section of the body of the bill declares: "*It shall be the duty* of the board of trustees of the village of Saratoga Springs to construct," etc., etc. This provision makes the bill a mandatory rather than a permissive measure. As such it is contrary to those principles of home-rule which, to insure lastingly successful administration, should and must be applied as well to our own State as to distant countries.

If a bill is prepared, and meets the approval of the Legislature, giving to the board of trustees of Saratoga Springs certain additional powers in the matter of the construction of sewers, even though only applying to a limited portion of the village, I should be inclined to sign the measure.

The fact is recognized that Saratoga has need in particular directions for somewhat different regulations than those that will serve for the best government of other places of the State. But while this may be so in a few obvious instances, it can hardly be urged as a conclusive reason for attempting to legislate for this town at the Capitol at Albany rather than at the Town Hall of Saratoga.

The title "trustee" itself supposes trust reposed. If the citizens of Saratoga do not take pains to elect men in whom the power to construct sewers can safely be vested, they can hardly with justice ask the State to be a guardian of their local interests.

Effective and economical home-rule for all the localities of the State will be secured only when every city, town and village becomes aware that reforms in local matters must be inaugurated and prosecuted to a successful termination by home effort, and not by the interposition of the higher power of the State Legislature.

DAVID B. HILL.

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VETO, SENATE BILL No. 59, TO EXEMPT FROM TAX-  
ATION THE REALTY OF THE YOUNG WOMEN'S  
ASSOCIATION OF TROY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER.

ALBANY, *February 25, 1887.* }

*To the Senate:*

Senate bill No. 59, entitled "An act in regard to the taxation of the real estate of the Young Women's Association of the city of Troy," is herewith returned without approval.

This is a special act which provides that the real estate now owned, or that may hereafter be acquired, in the city of Troy by the Young Women's Association of that city, not exceeding forty thousand dollars in value, shall be hereafter exempt from State and local taxation. My objection to such legislation is that it is special in its character. There is a general statute of the State which provides in detail what property shall be exempt from taxation. If it is desirable that an additional

species of property should be exempted, it should be specified in that statute.

It is unquestionably true that the Young Women's Association of Troy is a deserving organization, and there may be great propriety in exempting its property from State as well as local taxation, but if such an association in the city of Troy is to be relieved from taxation, deserving associations in other cities are entitled to the same consideration. There should not be a special act in each particular case. The general law should be amended, and prescribe just what species of property or worthy charities throughout the State shall be exempted from taxation. The Legislature should not be called upon to consider the merits of each particular application when it is made, or to pass a special law whenever an exemption is deemed desirable.

There is no doubt in my mind of the propriety and soundness of this position. It is with great regret that I feel compelled to withhold my approval from this measure, intended to benefit so useful an association, but it is only by such action in particular bills that the attention of the Legislature can be brought to the general subject, and thus an enactment secured which will avoid the necessity in future similar cases of the interposition of the highest power of the State.

There should be a general statute covering all exemptions from taxation, so that all citizens and corporate bodies of our Commonwealth may stand upon an equal footing.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
138, TO AMEND THE CHARTER OF THE CITY  
OF OSWEGO. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 25, 1887. }

*Memorandum filed with Assembly bill No. 138, entitled "An act to amend and make additions to chapter four hundred and sixty-three of the Laws of eighteen hundred and sixty, entitled 'An act to revise the charter of the city of Oswego,' and the acts amendatory thereof." Approved.*

This act makes two important changes in the city government of Oswego. One of them is the abolition of the offices of treasurer and collector, and the creation of the office of city chamberlain. This amendment was suggested last year, and there was no particular opposition to it. There is no city in the State of the size of Oswego but what has such an office, and I am satisfied that this change is in the interest of better government and in the interest of the tax payers. Collectors of taxes will answer for towns, but in cities like Oswego the duties ordinarily performed by a treasurer or collector should be performed by one official like a chamberlain. There seems to be no particular opposition to this amendment at the present time, so far as I can learn.

The other change consists in reducing the number of aldermen in the city from two from each ward to one from each ward. It provides that the aldermen now in office and whose terms do not expire until next year shall be permitted to remain in office for that year, and that no aldermen shall be elected at the ensuing charter election. If a reduction of the number of aldermen is to be made, it is better that the alder-

men already in office should not be legislated out of their offices, but that the reduction should be made by not electing any new aldermen at the coming election. There does not seem to be much opposition to this reduction, but it is claimed by those who have appeared in opposition to the bill, that the aldermen who are already in office, and who are permitted to serve out their term, are in some way committed against the interests of the city in favor of the Oswego Water-Works Company, and that by reason thereof the interest of the tax payers of the city will not be fully promoted. This is an imputation upon the aldermen already in office, which seems unreasonable. I cannot believe that they are the mere creatures of the water company, and that they will not properly discharge their duties in favor of the city's interest in whatever contract they may make with the water company. If the proposed change is a desirable one, it ought not to be defeated by reason of any mere suspicion which may exist in reference to these aldermen. I am bound to believe that they will subserve the interests of the city properly, and, if not already so disposed, they would not dare to incur the displeasure of the public sentiment of the city.

There are no politics in the bill, as it seems to be approved by men of both parties. It is asked for by the representatives of Oswego county in the Senate and Assembly, and I do not think that the objections urged against it are sufficient to justify me in withholding my approval. I have, therefore, this day approved the bill and append to it this explanation.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 13—UNION SCHOOL DISTRICT No. 4, ORANGETOWN, ROCKLAND COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 26, 1887.* }

*To the Assembly:*

Assembly bill No. 13, entitled "An act to amend section 4 of chapter 303 of the Laws of 1859, entitled 'An act to incorporate the Union Free School District No. 4, town of Orangetown, county of Rockland,' and to repeal section 1 of chapter 227 of the Laws of 1866, entitled 'An act to amend the act incorporating the Union Free School District No. 4, town of Orangetown, county of Rockland,'" is herewith returned without approval.

The only object of this bill is to change the time of holding the annual school meeting from the second Tuesday in October to the last Tuesday in August. It seems ridiculous that the passage of a law should be necessary to accomplish this simple object. Yet it undoubtedly is. The district is operating under a special law in which the time of the annual school meeting is fixed, and, therefore, it can only be changed by another special enactment.

I am of the opinion, however, that the proper way to correct this peculiar condition of affairs is to repeal the provision of the special act fixing the time of the school meeting in Union Free School District No. 4 of Orangetown, thus leaving the matter subject to the operation of the general law. The passage of such a bill will accomplish the result desired by the people of the district, and in all probability save some future special legislation.

DAVID B. HILL.



MEMORANDUM FILED WITH ASSEMBLY BILL No.  
85, RELATING TO U. S. DEPOSIT FUND IN  
STEUBEN COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 28, 1887. }

*Memorandum filed with Assembly bill No. 85, entitled "An act in relation to the commissioners for loaning certain moneys of the United States in the county of Steuben," which, not having been returned to the house in which it originated within ten days, became a law pursuant to article IV, section 9, of the Constitution.*

The settled policy of the State for some years has been to consolidate and centralize this fund in the State treasury, and thus to avoid losses and mismanagement. That policy I approve. This bill seems to be based upon an opposite policy. In reality, however, it arises from a combination of circumstances not likely to be repeated, and hence the act cannot be referred to as a precedent. For this reason it is permitted to become a law under the constitutional provision.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 14, TO LEGALIZE ACTS  
OF NOTARIES PUBLIC.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 28, 1887. }

*To the Assembly:*

Assembly bill No. 14, entitled "An act to legalize and confirm the official acts of notaries public," is herewith returned without approval.

It has been the custom of late years to pass such a bill as this. It legalizes not only all clerical mistakes and trifling irregularities committed by notaries public, but also all their acts even though they omitted to take their oath of office as required by law, or are under age, or their term of office has expired, or they have changed their residence to another county, or have omitted to file certain certificates as required by law.

The act is very broad and sweeping. My objection to this kind of legislation is that it legalizes irregular and illegal acts by the wholesale, and encourages looseness in administration on the part of these and other public officials.

There seems to be no public necessity for the bill. The acts of acting notaries public are valid as against third persons, even though by reason of irregularities or omissions they might not protect the officials themselves. The enactment of a bill every year legalizing all the acts of these officials tends to encourage them in neglecting the observance, on their part, of the provisions of law required and intended for the safety and protection of the public. It is the experience of the Executive Department that these bills lead these officials to believe that it is perfectly immaterial whether or not they take any oath of office, or serve when they are under age, or reside in the proper county, as they believe that their acts will be made legal as soon as the Legislature meets.

The reasons given in a recent communication to the Assembly withholding my approval from a similar bill in reference to justices of the peace expresses more fully my objections to this legislation.

It is true that in other years this form of legislation has been approved, but I think it is better that it should now be stopped.

DAVID B. HILL.

IN THE MATTER OF ALEXANDER SHALER, PRESIDENT OF THE DEPARTMENT OF HEALTH OF NEW YORK CITY — ORDER CONFIRMING REMOVAL FROM OFFICE BY THE MAYOR.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

WHEREAS, The mayor of the city of New York, by an order made on the 25th day of June, 1886, has removed Alexander Shaler from the office of president of the department or board of health of the city of New York, after allowing him an opportunity to be heard, as required by law, and the said mayor has submitted to me his reasons for such removal; and

WHEREAS, The said president has been given an opportunity to be heard before me, and counsel have been heard in his favor in opposition to such removal, and counsel for the said mayor have also been heard in favor thereof, and the arguments presented have been duly considered by me:

*Now, therefore, it is ordered,* That the removal of the said president of the department or board of health of the city of New York be and is hereby approved.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this fourth day  
[L. s.] of March, in the year of our Lord one thousand  
eight hundred and eighty-seven.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

OPINION OF THE GOVERNOR IN THE SAME  
MATTER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 4, 1887. }

*In the Matter of the Removal of Andrew Shaler from the office  
of president of the department of health. Opinion.*

The order of approval speaks for itself. Two points only need to be stated by way of explanation and justification.

*First. As to the delay.* The decision of these charges has been delayed because of the pendency of a criminal prosecution against General Shaler, based upon the same facts upon which his removal is sought. The propriety of such course was clear, especially where the criminal proceedings had not been unreasonably delayed. The mayor, for a time at least, recognized the appropriateness of non-action pending such criminal proceedings, because he delayed his own action in the matter for a period of nearly seven months, to-wit: from November 30, 1885, to June 25, 1886. Having refused to proceed pending the two criminal trials which Shaler had (such trials resulting each time in a disagreement of the jury) there would seem to have been great propriety in awaiting the result of a third trial or the termination of the prosecution, but it appears that after the second trial, and without any claim that the prosecution had been unnecessarily delayed, the mayor finally made the order of removal therein.

I have not deemed it my duty to proceed with the case under these circumstances, but determined to await the disposition of the criminal prosecution before taking final action. This course was eminently proper, and was required by the decisions of the courts in analogous cases.

A brief statement of the case will elucidate this position :

The office from which Shaler is sought to be removed is that of president of the health department of New York city. It is not claimed that he has neglected any official duty pertaining to this office. There is no pretense that he has accepted any bribe so far as this office is concerned, nor is he under any charge or indictment on account of any official act as president of the health department, but the claim is, that as a member of an armory board, which position he held *ex-officio* as a major-general of the National Guard, he accepted a bribe to influence the discharge of his duty, and for this offense, and this alone, he was indicted.

The two offices (president of the health department and member of the armory board), although held by the same person at the same time, were entirely distinct and separate from one another, and the duties different. Before these charges reached me he ceased, by resignation, to be a major-general, and, therefore, ceased to be a member of the armory board. He is, then, no longer an official in the office in which, and pertaining to the duties of which, the offense is alleged to have been committed. Under such circumstances it was manifestly improper for the Executive to proceed until the criminal case should be terminated.

It would be different if the charge against him, and for which he stood indicted, related directly to the discharge of his official duties as president of the health department. In that case, from the very nature of things, the charges should be proceeded with, and might be progressed irrespective of the criminal action. But, where the criminal charge is distinct from the official duties of the office from which his removal is sought, then the disposition of the charges, where they constitute a criminal offense and are the subject of an existing indictment, should be delayed until the termination of the criminal case.

The reason for this very just rule is that the accused ought not to be prejudiced by a removal under such circumstances, and that he is entitled to a trial by a jury on the criminal charge. If, for instance, some one should present to the Governor charges against the mayor of New York, not connected with the discharge of his official duties, but charging him with robbery, forgery, assault and battery, false pretenses, or any other misconduct constituting a crime, and for which he was indicted, should the Governor proceed to investigate the truth of such charges and try such an issue pending the trial of the indictment? Would not such a procedure be manifestly improper and unjust? Is not the accused official entitled to a jury trial in court upon such an accusation? It is reasonably clear that the charges should be delayed until the termination of the criminal case, so that his case should not be prejudiced by a removal. If it is not so delayed, and the Governor proceeds to investigate the charges on his own responsibility, and removes the official, who is afterward tried in court by a jury and acquitted of the same charges, in what predicament or situation does it leave the Executive? These inquiries illustrate the entire propriety of the rule which I have adopted in this case.

Such a removal is analogous to the removal of attorneys by the Supreme Court for misconduct, and the same rule should govern. It is settled that where the charge made against an attorney constitutes a crime, which is the subject of an indictment, and upon which charge the attorney stands indicted, and it does not relate to the discharge of his official duties as an officer of the court, the court will not proceed with or take final action in the case until the conclusion of the criminal trial. These authorities seem applicable to the questions involved: *Ex parte Wall*, 107 U. S. R. (17 Otto, 265); *Ex parte Strimman*, 95 Pa. St. 229; *People, ex rel., etc., vs. Weigant*, 14 Hun, 546; *People, ex rel. Siebert, vs. Police Commissioners*, 20 Hun, 333; *Rex vs. Richardson*, 1 Burrow, 538.

Here Shaler was indicted, and the charge was a crime, to-wit: bribery in another office, an offense in no way connected with the discharge of the duties of the office of president of the health department; he had been twice tried, and the jury had disagreed, and the indictment was still pending. It was manifestly improper to proceed with his removal until such criminal action was finally terminated, and for these reasons I have heretofore refused to decide the case.

The situation has now changed. The district attorney, in the exercise of the discretion vested in him by law, has, with the approval of the court, entered a *nolle prosequi* in the criminal case, and the prosecution is, therefore, terminated. Under such circumstances I hasten to decide the case.

*Second. As to the merits.* I do not propose in this decision to discuss the other questions involved. Whether Shaler can properly be removed from one office for offenses committed in another office, or in another official capacity, or whether the provisions of sections 57 and 59 of the Consolidation Act can be applied to his case so that he can be deemed to have violated those sections, and thereby subjected himself to removal without first having been convicted by a jury, are legal questions which are not free from difficulty. But Shaler's usefulness as a public official having been greatly impaired, and he having interposed no evidence in his own behalf in opposition to the charges proved against him, but having relied solely upon the technical question of jurisdiction, and two juries having failed to agree as to his guilt or innocence, and the criminal charge being no longer pending, to be affected or influenced by any act of mine, I have concluded to give to the proceedings for his removal the benefit of every doubt, and have, therefore, approved the order of the mayor of New York removing him from the office of president of the health department of New York city.

DAVID B. HILL.

VETO, SENATE BILL No. 181, TO INCORPORATE  
THE 'TEACHERS' MUTUAL BENEFIT ASSOCIA-  
TION OF NEW YORK CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 7, 1887.* }

*To the Senate:*

Senate bill No. 181, entitled "An act to incorporate the Teachers' Mutual Benefit Association of the city of New York," is herewith returned without approval.

There is no necessity for this measure. The objects of the proposed incorporation can be accomplished under the existing general laws of the State.

Chapter 267 of the Laws of 1875 expressly provides for the incorporation and organization of "mutual benefit" associations. Teachers, lawyers, physicians, ministers or anybody else can organize a "mutual benefit" association under its provisions, and there is not, apparently, the slightest propriety in enacting a special law for a particular class of people who can properly avail themselves of the general law already upon the statute book, which is ample and sufficient for every purpose. The teachers who have sought this special legislation have been wrongly advised as to their existing rights and privileges.

DAVID B. HILL.



VETO, ASSEMBLY BILL No. 99, TO PROVIDE FOR  
A BRIDGE IN SHERBURNE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 12, 1887.* }*To the Assembly :*

Assembly bill No. 99, entitled "An act to enable the village of Sherburne to raise an additional sum of money for the purpose of building a new bridge over Potash creek," is herewith returned without approval.

This is decidedly special legislation, and the title fully describes the purpose of the bill, which is to provide funds for building a bridge over a creek in a village. The next time this village needs a bridge over some other stream, or another bridge over this same creek, more legislation will apparently be necessary. It seems time this sort of law-making should cease, and I am convinced that the people of the State of New York never intended that the attention of the Senate and Assembly should be continually directed to matters of such purely local importance—trivial in their nature as compared with those questions which deserve careful consideration by the highest power of the State.

In this particular subject there should be a law enacted applicable to all villages, whether incorporated under special or general law, by which, upon a majority vote of the electors, a two-thirds vote of the trustees, or some other method, money could be raised for the erection of bridges or for other purposes of a similar character. There are hundreds of villages and thousands of creeks within our State, and some comprehensive general legislation applicable thereto may well find a place in our statute books.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 141, FOR AN ADDITIONAL JUSTICE OF THE PEACE IN YORKSHIRE, CATTARAUGUS COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 16, 1887.* }

*To the Assembly:*

Assembly bill No. 141, entitled "An act to authorize the town of Yorkshire, Cattaraugus county, to elect an additional justice of the peace," is herewith returned without approval.

This is special legislation of the worst kind. The statute provides for the election of four justices of the peace in all the towns of the State. It is true that there have been precedents for this kind of legislation, but they should be avoided, rather than followed. The number of justices of the peace in each town should be uniform throughout the State, so far as possible. Every time a town fancies that it desires an additional justice of the peace the Legislature should not step in and authorize it. There are too many towns in this State to be constantly changing the number of town officers by act of the Legislature.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 300, TO AMEND THE  
CHARTER OF THE AMERICAN FEMALE GUARD-  
IAN SOCIETY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March* 16, 1887. }

*To the Assembly :*

Assembly bill No. 300; entitled "An act to amend chapter two hundred and forty-four of the Laws of eighteen hundred and forty-nine, entitled 'An act to incorporate the American Female Guardian Society,'" is herewith returned without approval.

This is a special act, and, under the form of an amendment to the special charter granted by the Legislature in 1849, provides for a change of the name of a corporation. This is all the object sought to be accomplished by the bill.

Chapter 322 of the Laws of 1870, as amended by chapter 280 of the Laws of 1876, provides for the changing of the names of all corporations upon application to the courts. This statute is broad enough to include all corporations created by special acts, as well as those organized under general laws. If there is any doubt about the construction of the general statute, it should itself be amended so as to include such cases as this. This is special legislation and it cannot be approved. The courts are open, and the friends interested in the proposed change should apply to them and not to the Legislature

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
403, CHANGING THE SITE OF THE OSWEGO  
CITY JAIL. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 16, 1887.* }

*Memorandum filed with Assembly bill No. 403, entitled "An act authorizing the board of supervisors of Oswego county to change the site of the jail in Oswego city, and to raise money therefor." Approved.*

Chapter 160 of the Laws of 1885, entitled "An act to provide for changing the site of county buildings," would seem to obviate the necessity for this act. The evident intent, however, of that law was to provide for cases where it was the purpose to change the site of the county building from one city or village to another. The bill before me is to meet the desire to change the site of the county jail of Oswego county from one block in Oswego city to another close by, and, to avoid the complicated and extended proceedings prescribed by chapter 160 of the Laws of 1885, I am willing to sign a special act for that purpose.

DAVID B. HILL.

MESSAGE TO THE SENATE, WITHDRAWING THE  
NOMINATION OF JAMES ARKELL AS RAILROAD  
COMMISSIONER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 17, 1887.* }*To the Senate :*

Having heretofore nominated James Arkell, of Canajoharie (a former member of your honorable body, and well known throughout the State as a gentleman of high character, ability and integrity), as Railroad Commissioner, in place of John O'Donnell, whose term of office has long since expired, and no action having been taken thereon by the Senate, either favorably or adversely, although a reasonable time has elapsed, I hereby withdraw the said nomination.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 234, TO ESTABLISH AN  
ADDITIONAL SCHOOL DISTRICT IN NEWTOWN,  
QUEENS COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 18, 1887.* }*To the Assembly :*

Assembly bill No. 234, entitled "An act to establish Free School District No. 12 in the town of Newtown, Queens county," is herewith returned without approval.

This bill possesses the same characteristics as numerous others from which I have felt compelled to withhold my

approval during this session. It is special legislation, and not only special, but unnecessary legislation. It aims to establish a new school district in the town of Newtown, Queens county, and to accomplish this result the whole legislative power of the State is invoked, and this notwithstanding the fact that chapter 555 of the Laws of 1864 has provided a way for the accomplishment of the same end by means of the local school authorities. By this law, the formation and alteration of school districts is left to the discretion of those who are presumed to know best the requirements of their neighborhood, and any possible injustice is provided for by the privilege of appeal to the State Superintendent of Public Instruction.

It can hardly be claimed that either the Assembly or the Senate can have been so well informed as to enable it, with the multitude of other matters engrossing its attention, to come to a more just conclusion than the local school authorities will be able to do.

After giving the merits of the question involved careful consideration, I am of the opinion that no interest will suffer if the general law is applied to Newtown school matters as well as to all the other towns of the State. There seems to be little doubt that a majority of the people of the district desire the change proposed by the bill, and it is probable that such change would be beneficial to the interests of the district. Under these circumstances I am convinced that a proper application to the local authorities will receive just consideration, and that a decision in accordance with the wish of the majority will be arrived at. But I am just as fully convinced that the local authorities, and they alone, are the ones who should make the decision.

There are 11,262 school districts in the State, and to establish any other course of procedure other than that above laid down would encourage action contrary to, and would violate the principle I have not infrequently announced, namely, that

matters of great and general consequence, rather than those of local and comparatively trivial importance, should receive the attention of the Legislature. Let local school officers decide local school questions, and let the Legislature fulfill the Constitution by passing general laws, applicable, with rare exceptions, to every locality, and to the whole people of the State.

DAVID B. HILL.

MEMORANDUM FILED WITH SENATE BILL No. 220,  
AMENDING CONSOLIDATION ACT OF NEW YORK  
CITY, RELATING TO THE PUBLIC HEALTH.  
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 25, 1887. }

*Memorandum filed with Senate bill No. 220, entitled "An act to amend chapter four hundred and ten of the Laws of eighteen hundred and eighty-two, entitled 'An act to consolidate into one act, and to declare the special and local laws affecting public interests in the city of New York,' in relation to the powers, duties and health fund of the board of health and of the health department of the city of New York, and for the preservation of the public health." Approved.*

The attention of the Legislature was called, in my last annual message, to the general subject of the condition of tenement-houses. This bill proceeds with caution in the reforms there suggested, and which were also advocated in detail in the report of the tenement-house committee of 1884-85, upon which this bill is understood chiefly to be based. There were some provisions contained in the measure, as at first introduced, which I think might have remained with advantage. I find also in the bill as passed one or two sec-

tions, the wording of which might be improved; but these errors of omission and commission are not serious. Although I am convinced that a much more radical correction of abuses is possible and advisable, I have willingly approved this bill, believing it certainly to be a step in the right direction, particularly as it provides for an annual meeting of the mayor and other city officials to consider this whole question, and to make recommendations which will almost undoubtedly lead to further remedial legislation.

DAVID B. HILL.

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VETO, SENATE BILL, NOT PRINTED, TO FIX THE  
PAY OF ELECTION OFFICERS IN QUEENS  
COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 28, 1887.* }

*To the Senate:*

Senate bill, not printed, entitled "An act to fix the compensation of inspectors of election and poll clerks in certain towns in Queens county in the State of New York," is herewith returned without approval.

This bill is special legislation. The general election laws of the State provide the compensation that shall be paid to inspectors of election and poll clerks in the various towns of the State. It seems no great hardship that this rate of compensation should be uniform in all towns throughout the State. In any event, if different rates are deemed necessary, the power to fix them should be lodged by general statute in the boards of supervisors, and legislation for each county, much less for each town, should not be asked for at Albany.

DAVID B. HILL.



VETO, ASSEMBLY BILL No. 294, PROHIBITING SALE  
OF INTOXICANTS NEAR THE WILLARD ASYLUM.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 29, 1887.* }*To the Assembly :*

Assembly bill No. 294, entitled "An act to prohibit the sale of intoxicating liquors, ale and beer within one-half mile of the grounds of the Willard Asylum for the Insane," is herewith returned without approval.

This is special legislation. It is not claimed that the bill is for the direct protection of the inmates of the Willard Asylum; its approval is not urged in order to prevent them from obtaining liquor. They are kept within the asylum boundaries. But the alleged reason for this peculiar and unusual special legislation is that some protection is needed for the employés of the institution, who are subjected by one saloon to a temptation which the Legislature is entreated to remove. It appears rather ridiculous that the action of the highest legislative and executive authority should be invoked in such a matter. If an employé of the asylum offends against any reasonable regulation of its officers, it certainly would not seem to be difficult to obtain the services of some one to take his place who would willingly be obedient to all rules.

There can be hardly a question that if the officers of the Willard Asylum should make a request of the towns concerned that no license should be granted within half a mile of the asylum, and show any good or special reason why the discretion to grant or refuse licenses should be thus exercised, that their desire would be regarded. It does not appear, however,

that any such request to the local authorities intrusted by general statute with power in such matters has been made. The truth is, it is easier to come to the Legislature at Albany and secure, by special legislation, what is wanted, than to make use of the local machinery already provided.

It would be just as proper for the Legislature to pass a special act prohibiting the board of excise of Albany city from granting any license to sell liquor within half a mile of the Capitol, in order to prevent State officers, members of the Legislature and its employés from being subjected to the temptation of undue indulgence in intoxicating drinks.

Such particular legislation as this in regard to licenses furnishes a bad precedent. The excise laws should be substantially uniform in all parts of the State, and special laws should not be passed discriminating for or against particular localities.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 537, TO AUTHORIZE  
THE OSWEGO COUNTY AGRICULTURAL SO-  
CIETY TO MORTGAGE PROPERTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 29, 1887.* }

*To the Assembly:*

Assembly bill No. 537, entitled "An act to authorize the Oswego County Agricultural Society to execute its mortgage to pay certain indebtedness," is herewith returned without approval.

This bill is special legislation, and seems to be inexpedient, as well as unnecessary. If this society is a corporation organized under the general act for the incorporation of agricultural societies, the bill is unnecessary, for the reason that

such general law expressly provides a method for mortgaging such corporate property. If it is a corporation created by a special act, the special act should be amended, which is not proposed by this bill, or a general law should be passed providing for a method of mortgaging the property of that class of corporations. There should not be a special law for every such institution that may desire at any time to incumber its property.

The *status* of this society is a little uncertain, and I am unable to ascertain whether or not it is a corporation at all. If, as I am inclined to believe, it is not a corporation, but a mere voluntary association, as such it has all the liberty of a private partnership in the matter of mortgaging its property.

The bill is also unwise, in seeking to establish a special rule as to the lien of this proposed mortgage. It provides "from the time of being recorded in the office of the clerk of Oswego county the said mortgage shall be a valid lien," thus changing, in this particular case, the rule, which is that a mortgage takes effect and is a lien from the time of its execution and delivery, save in certain specified instances.

The bill also contains other provisions which are wholly superfluous.

DAVID B. HILL.

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MESSAGE RELATING TO SPECIAL AND LOCAL  
LEGISLATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 30, 1887.* }

*To the Legislature :*

I deem it my duty to call your attention to the increase of special and local legislation during recent years, and to suggest the propriety of considering some plan for relief.

It is evident that the greater portion of the session of each Legislature is occupied with the consideration of special and local measures having no relation to the State at large, and such consideration involves the exclusion of general measures affecting the people of the whole State.

This evil was recognized and was in part remedied by the adoption of the constitutional amendments of 1874, which prohibited certain private and local legislation which it had theretofore been customary to enact, and expressly empowered the Legislature to frame general laws for such cases, "and for all other cases which, in its judgment, may be provided for by general laws."

The salutary effect of these amendments was soon evidenced by the passage of more general and fewer special laws, besides reducing the whole volume of legislation, the number of laws enacted in 1876 being only 448, and in 1878 being only 418, while in 1869 the number had risen to 920, and in 1871 to 946.

But it is quite apparent that the constitutional power vested by these amendments in the Legislature, for the prevention of special and local legislation, has not been exercised as entirely and perfectly as is desirable. The number of laws enacted during the past five years has been steadily increasing, notwithstanding a liberal use of the veto power by the Executive. This fact is shown by the following statement, taken from the Session Laws:

Years.	No. of laws enacted.
1882 .....	410
1883 .....	523
1884 .....	551
1885 .....	557
1886 .....	681

It may be safely asserted that much of this legislation is not absolutely required, or could be avoided by the passage

of general laws. There is always danger of too much rather than too little legislation. The difficulty appears to be—and I state it with all due respect to the Legislature—the members are apparently too desirous of obliging their immediate constituents by the procurement of special and local legislation in their behalf, rather than by accomplishing the objects of such legislation by the passage of general laws applicable to the whole State and for the benefit of all the people; and the Executive—anxious to gratify the members as far as he can reasonably do so in the discharge of his official duty—too easily yields his convictions of duty and propriety, and too frequently approves not only unnecessary legislation, but legislation of questionable utility and doubtful benefit.

The true remedy lies in the Legislature fully availing itself of the power, which it clearly possesses, to suppress such legislation, by rendering it unnecessary and undesirable, in the perfecting of a series of general laws embracing all subjects usually covered by such enactments.

The present session is more than half over and twenty more laws have been enacted up to this time than at the same period last year, and there are now on the files of the two houses, reported from the various committees, over 1,273 proposed laws, an almost unprecedented number.

Of the ninety-seven laws already enacted, there are only about fifteen of them that can be considered general in their character, and of these five are amendments to the Code.

The important measures of general interest, which were early introduced, do not seem to have made much progress as yet; but it may be assumed that they have been crowded out and retarded by the great pressure of special and local legislation.

It is clear that further general laws should be passed for the organization of corporations as well as laws conferring greater powers upon the local authorities of municipalities

and boards of supervisors, providing for uniform tax laws in the various counties and a uniform law of exemption, enlarging the powers of the court for changing the names of corporations and many other laws of like character.

I believe in the principle of home-rule and favor its practical application to all the cities, villages and towns of the State.

They should be permitted to govern themselves in all matters of purely local concern, without the intervention of the Legislature. I can see no propriety in these municipalities applying to the Legislature for authority every time they desire to make a special improvement, or to raise an extra amount of tax, or to create an additional indebtedness, or to issue further bonds.

Whenever it is deemed expedient to open a new street, or to alter a city map, or to erect a new school building, or to construct a sewer, or to pave a street, or to build a bridge, they should have the power to do so, under well-guarded restrictions. No application should be made to the Legislature where it can properly be avoided.

The valuable time of the legislators of our great State should not be occupied with such comparatively unimportant matters, or matters of purely local importance.

The local authorities can as well be trusted for a proper disposition of such questions as the Legislature, because every one familiar with the methods or course of legislation knows that the enactment of local bills is practically left to the discretion of the local representative, and his desires are generally controlling. While in form the bill is deemed to express the wisdom and will of the whole Legislature, in truth and in fact its provisions usually only express the wishes of the immediate representative of the locality interested.

All of such matters can more safely be remitted to the local authorities, and the time of the Legislature can better be occu-

pied in the consideration of important general measures, now too much neglected.

Hon. David Dudley Field, in his recent admirable address before the State Bar Association, stated that each statute enacted last year cost the State the sum of \$734; and it appears from an inspection of the Session Laws that of the 681 laws of last year there were only 249 that can properly be considered of a general character.

A wise economy will be promoted, as well as the best interests of the State subserved, by an earnest effort to diminish the number of superfluous laws. Instead of constantly amending the charters of our cities or passing special enactments conferring temporary powers whenever any extra authority is desired, there should be a general statute passed providing for such cases, with ample safeguards surrounding the authorization.

The special legislation concerning the city of Rochester furnishes a fair illustration of this point. Almost every year since the revision of its charter in 1880, special acts have been passed authorizing the common council to levy amounts to build school-houses in addition to that allowed by its charter for school-building purposes, viz.:

Years.	Chapters.	Amount authorized.
1881.....	Chapter 72.....	\$17,500
1882.....	Chapter 69.....	18,000
1883.....	Chapter 351.....	15,000
1884.....	Chapter 213.....	42,500
1886.....	Chapter 190.....	<u>20,000</u>

Another act has been passed by the present Legislature authorizing a further levy of \$55,000 for additional school buildings, and, while deploring such a system of legislation, I have permitted the same to become a law without my signature.

There is also a certain village in the State which applies to the Legislature for a special law every time it desires to build a new sewer or to make any other improvement; and the

member who represents that district very frankly asserts to me that the people of the village prefer to be governed from Albany rather than at home. The system must be regarded as a pernicious one, however, and should not be continued.

Twenty-two special acts relating to Albany city and its affairs were passed by the last Legislature. Other cities have almost an equal unenviable record.

While uniform city charters may not be feasible, certain general additional powers of local legislation may appropriately be conferred, which will very greatly dispense with any pretended necessity for frequent legislative interference. So long as special legislation is easily procured and readily approved, just so long will there be a delay in any reform in this matter.

The system or abuse of special legislation is the growth of years and has been occasioned by the absence of general laws covering the subjects upon which legislation is desired.

The evil cannot be immediately remedied, and certainly not by the passage of hastily-conceived or ill-digested measures, but only by a series of carefully-prepared and well-considered general laws, which cannot readily or conveniently be framed by members themselves during a busy legislative session.

I, therefore, desire to suggest for your consideration the propriety of the passage of an act authorizing the appointment of a commission of three persons, familiar with the law and with legislative proceedings, to prepare and submit to the next Legislature a series of general laws upon such subjects as may be specified in the act, or as the commissioners may deem proper and expedient.

DAVID B. HILL



VETO, ASSEMBLY BILL No. 377, TO PROVIDE FOR  
SEWERS IN CANANDAIGUA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 2, 1887. }

*To the Assembly:*

Assembly bill No. 377, entitled "An act to provide for the construction of sewers and drains in the village of Canandaigua, and repealing section three of chapter four hundred and seven of the Laws of eighteen hundred and seventy-six, entitled 'An act to extend the powers of the trustees of the village of Canandaigua,'" is herewith returned without approval.

This bill is unnecessary, contains substantial defects, and is not free from clerical errors.

The purpose of the bill is to authorize the village of Canandaigua to construct such sewers within the village "as they shall regard necessary for the preservation of the public health," and to condemn lands necessary therefor. The trustees of this village already have more ample powers in this respect by Chapter 407 of the Laws of 1876, as amended by subsequent legislation, than is conferred by the general act upon villages incorporated thereunder. This bill proposes no change in the main features of the act of 1876, but only amplifies the procedure already provided, with more than usual fullness, by that act. By repealing only section three of the act of 1876, and leaving section one thereof in force, this bill, if it should become a law, would create uncertainty in the interpretation of the final clause of section one of the act of 1876, and would require the construction of two independent statutes for the same object, always a source of confusion, and a vicious method of legislation.

The most serious objection to the substance of this bill runs through sections five to eight, inclusive, requiring the trustees of the village, forthwith, upon the determination of the amount of damages for lands taken, to estimate the probable expense of constructing a proposed sewer. Upon the basis of this probable estimate, damages and benefits are to be appraised, and the entire estimated expense of the sewer is to be levied and collected of the adjoining property-owners at once, without necessarily waiting either for the commencement or completion of the sewer. No provision is made for any adjustment of the variation between the estimated expense thus levied and collected, and the actual expense as finally ascertained after the completion of the sewer. If the adjoining property-owners shall have paid more than the actual cost of the sewer, no provision is made for reimbursing them. If, on the other hand, the amount collected be less than the actual cost, no provision is made for supplying the deficiency.

Among the more serious clerical errors contained in the bill are the following: Both the title and section 12 of the bill misquote the title of the act of 1876; the twentieth line of the seventh section of this bill reads, that the commissioners shall make such amendments as "*they may shall* think just;" the second line of the eleventh section reads: "*In case the trustees of said village have or are able* to acquire by agreement."

If on a more thorough examination of the act of 1876 than it is fair to presume the Legislature have yet given thereto, any variations therefrom are deemed necessary, such variations should be embodied in an entirely new bill containing carefully-prepared amendments to that act.

DAVID B. HILL.

VETO, ASSEMBLY BILLS NOS. 17 AND 374, TO CHANGE  
THE MAP OF CERTAIN WARDS IN NEW YORK  
CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 6, 1887. }

*To the Assembly :*

Assembly bill No. 17, entitled "An act to authorize the department of public parks to alter and amend a part of the map of the city of New York in the twenty-fourth ward," also Assembly bill No. 374, entitled "An act to authorize the department of public parks to alter and amend a part of the map of the twenty-third ward of the city of New York," are herewith returned without approval.

The same reasons hold against both these special bills, and as well against the large number of like special bills changing the map of the twenty-third and twenty-fourth wards of the city of New York, which are now pending in the Legislature.

While these bills are permissive in form, they constitute a very objectionable species of legislation. The mere fact of their passage is invariably urged upon the department of public parks as an indication of the will of the Legislature, and as constituting a kind of moral, if not legal, mandate upon the commissioners.

That the power should be vested somewhere to change the map or plan of this portion of the city is unquestioned. The large area, formerly constituting a portion of Westchester county, and annexed to the city of New York in 1873, was laid out and mapped a number of years ago by the then park commissioners according to the best judgment they could then form as to the probable needs of that portion of the city in the future. In many cases conditions have changed so that it

is desirable that alterations of plan should be made, and this has resulted, in the present and in former years, in the introduction of special bills to effect such changes. It seems to be so clear as to hardly need argument and demonstration that the interests of all concerned can be best conserved by the passage of a general law conferring upon some local authority, either the park department or the board of street opening and improvement, this general power subject to such reasonable restrictions, and with such provisions for public hearings as the Legislature may see fit to prescribe; or if it is deemed wise that neither these nor any other of the already constituted boards of New York city should have the power to change such maps, a new board for that special purpose could be established. Such acts as those first mentioned have been prepared and introduced in the Legislature, at the instance of the department of public parks, for several years, but have thus far failed to be enacted, and seem likely to meet with effectual opposition until it is found that relief must be obtained by a general act, or not at all.

A general act giving authority for the changes proposed in these bills returned without approval is now before the Legislature, and I respectfully commend the same to the consideration of your honorable body. Special legislation, where a general law can be enacted, is just as objectionable for the city of New York as for other portions of the State.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 80, TO PROHIBIT THE  
SALE OF INTOXICANTS IN PUBLIC BUILDINGS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 12, 1887.* }*To the Assembly:*

Assembly bill No. 80, entitled "An act to prohibit the sale of intoxicating liquors in any building or upon any premises belonging to the State of New York," is herewith returned without approval.

In my first annual message I respectfully recommended to the Legislature the appointment of a competent and experienced counsel to aid the Legislature in the framing of bills. I have since reiterated such recommendation, but thus far the Legislature has paid no attention to the suggestion.

There are very many able lawyers in the Legislature, but in the hurry of legislative business they have little time to devote to the preparation or examination of bills other than their own.

The history and objects of the legislation sought to be accomplished by this bill would seem to demonstrate the propriety of the selection of some able counsel to supervise proposed legislation.

A year ago, for the accommodation of members, a restaurant was established in the Capitol, and it was claimed then, and is still claimed by some people, that liquors are sold at such restaurant. The proprietor of the restaurant denies the charge, and, besides, he has no license for such purpose from the board of excise of Albany city, or any permission from the trustees of public buildings. If he sells at all, he sells in violation of law. It would not seem to be necessary to enact

another law to prevent his doing what he has already no right to do, and commits a crime in doing.

In the attempt to do an unnecessary thing last year, the Legislature passed an act forbidding any person to sell or "give away" any intoxicating liquors in any building belonging to the State, and making the violation of the act a misdemeanor and subjecting the offender to "summary removal" from any such building.

The bill was thus altogether too broad. It would have prevented the Executive from giving a glass of wine or ale to any guest at the Executive Mansion, and prevented a like courtesy on the part of the superintendent or officers of any of the public institutions of the State, where they reside in any building belonging to the State. The officers of the Soldiers' Home protested against the bill, and I withheld my approval from it.

This year the present bill has been passed. It is equally as objectionable as the one of last year.

If the sole object desired to be accomplished is to prevent the sale of liquors in the Capitol, and it is deemed desirable to have further legislation, then the proper way is to amend the general excise law of the State by providing that no licenses whatever shall be granted by any board of excise to sell liquors in any building belonging to the State excepting the State Soldiers and Sailors' Home at Bath, if it is deemed wise to make that an exception. No independent or separate act is necessary.

The proposed bill is bad in form. All the provisions relating to excise matters should be in one general act, and that general act should be amended if any thing further is desired. It is an easy and simple method, and readily accomplished. Besides, it may be suggested that it is wholly superfluous to pass another law to stop sales which are already in violation of law. If no one sees fit to enforce existing law, of what avail would another be?

In addition to these grounds, there seems to have been a studied effort to make the bill objectionable. In addition to providing that no license shall be granted to sell intoxicating liquors in any building belonging to the State, it unadvisedly goes further and prohibits the selling in such building of "any compound containing alcohol for use as a beverage." This is an unnecessary and troublesome provision. It would prevent the sale of several recognized temperance drinks.

The annexed appendix (copy) from Willis G. Tucker, analyst of the State Board of Health, shows what the effect of this kind of legislation would be.

Under these circumstances, I am compelled to withhold my approval from this measure.

DAVID B. HILL.

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#### APPENDIX.

*Memoranda.*—First. Every beverage, whatever its name, that in its preparation undergoes vinous fermentation, contains alcohol. Second. The potential proportion of alcohol in any such beverage is measured by the percentage of sugar it contains; for alcohol is made from sugar, by means of yeast, which splits up sugar into alcohol and carbonic acid. Third. This, therefore, includes lemonade, ginger beer, root beer, ginger ale, when fermented, cider, weiss beer, and some vinegars.

*Lemonade.*—In regard to lemonade, Hassall, in his work on Food and its Adulterations, page 663, says: "This beverage should consist of the juice of the *lemon*, a certain amount of the peel to flavor it, *white sugar* and *water* in certain proportions, the whole being subjected to fermentation by the addition of a little yeast. Thus prepared, lemonade is really an alcoholic beverage."

*Ginger Beer.*—Again, on page 664, in regard to ginger beer, he says: "Ginger beer—that is to say, the bottled and effer-

vescent beverage commonly known as ginger beer—should be prepared on the same principle as lemonade; the genuine article should not contain any thing but *ginger, white sugar* and *water*, the mixture being subjected in the same manner as lemonade to fermentation.

*Cider.*—Cider is defined to be “the fermented juice of the apple,” and to contain from five to ten per cent. of alcohol. (Ibid.) Kensington gives the following analysis of cider: water, 94.21; alcohol, 4.17; grape sugar, .35; dextrine, .51; albuminous compounds, .02; acid, .54; mineral matter, .20. Total, 100.

*Vinegar.*—According to Blyth’s Manual of Practical Chemistry, commercial vinegar is a more or less impure acetic acid, containing usually acetic acid, acetic ether, alcohol, sugar, etc.

WILLIS G. TUCKER,

*Analyst, State Board of Health.*

VETO, ASSEMBLY BILL No. 869, TO LEGALIZE ACTS  
OF EXCISE COMMISSIONERS OF THE TOWN OF  
SALEM, WASHINGTON COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 12, 1887. }

*To the Assembly:*

Assembly bill No. 869, entitled “An act to legalize the official acts of William J. McCollum and Daniel McCleary, as excise commissioners of the town of Salem, Washington county, for the year eighteen hundred and eighty-six,” is herewith returned without approval.

This proposed act conflicts with the principles enunciated in two previous vetoes of bills legalizing the acts of public offi-



cials. If officials will persist in neglecting their duties by failing to file the official bonds required by law, they must accept the consequences of their acts.

It seems that the commissioners of excise of the town of Salem who were elected in 1886 failed to file their official bonds, and by reason thereof other officials were this year elected to take their places, and such newly-elected officials are now assuming to act as the legal excise commissioners of the town of Salem. Whether a vacancy was actually created by the failure to file the bonds is a question which should not be decided by the Legislature, but by the courts. It is a sufficient objection to this bill that there are adverse claimants to the same offices, and the Legislature should not step in and aid some at the expense of others. The bill contains no saving clause, and does not except any suits pending or the rights of parties interested. The legislation looks like an attempt to settle disputed claims to office, and it cannot be sanctioned.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 455, TO AMEND THE  
LIQUOR LAW.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 12, 1887. }

*To the Assembly:*

Assembly bill No. 455, entitled "An act to further amend chapter one hundred and seventy-five of the Laws of eighteen hundred and seventy, entitled 'An act regulating the sale of intoxicating liquors,'" is herewith returned without approval.

There are two fatal objections to this bill, which render its approval impossible.

*First.* Its provisions, so far as they change existing excise laws, are only made applicable to the cities of New York and Brooklyn. All the other cities of the State are exempted from these provisions. The bill is thus rendered most objectionable, and this was not done inadvertently, but deliberately and intentionally. That intent was most clearly manifested when, on the third reading of the bill in the Assembly, it was amended for the avowed purpose of rendering it certain that its provisions should not by any possibility apply to any other city in the State besides New York and Brooklyn.

If the provisions of the bill were regarded as beneficial and not injurious, and were really intended or expected to promote the cause of temperance, it is difficult to discover a valid reason for the anxiety to maintain this discrimination. Besides, the record shows that an amendment was offered in both houses applying the provisions of the bill to all the cities of the State, and another applying them to several of the principal interior cities, but each of these amendments was unhesitatingly rejected by substantially the same vote that passed the bill.

This discrimination was not made at the request of the immediate representatives of these two cities in the Legislature, but, on the contrary, it was adopted against the protest of nine-tenths of them, and was imposed upon these two cities by representatives who refused to accept its alleged beneficent provisions for, or in behalf of, their own localities. The question is presented whether legislation procured under such circumstances, which is apparently so partial, inconsistent and disingenuous, should be permitted to ripen into law.

Samuel J. Tilden was elected Governor of this State in 1874, by more than fifty thousand majority, upon a platform which expressly declared in favor of "*uniform* and equitable excise laws." For many years this has been the controlling and settled policy of the State. Licenses have heretofore been

regulated by a general law, substantially alike in all essential particulars in its application to every part of the State. But, by the terms of the proposed law, certain acts, which are perfectly lawful in the interior, are made crimes in the cities of New York and Brooklyn. For all other cities, the maximum, as well as the minimum, license fee is prescribed by statute; but, by the peculiar provisions of this act, only the *minimum* fee is fixed for New York and Brooklyn. It thus appears that the keeper of a restaurant in cities other than New York and Brooklyn may procure an ale and beer license, and may at the same time lawfully "keep on hand" intoxicating liquors, while in these two cities the same act constitutes a crime and forfeits his license, and while in other cities he must pay for his liquor license a sum "not less than thirty nor more than two hundred and fifty dollars," in these cities he must not pay less than one thousand, and as much more as the board of excise in its discretion, whim or caprice may see fit to charge, and this, irrespective of the amount or extent of the business carried on by him. These distinctions do not seem to be based upon any intelligent, just or equitable considerations, and are utterly indefensible.

The excise law, like every other law of the State, should be fair and reasonable in its provisions. It should be substantially uniform throughout the State. This does not require that in all its minor details it should be the same in the country as in the great cosmopolitan cities of New York and Brooklyn, but it does mean that in these cities its restrictive provisions should certainly be as broad and liberal as those which apply to the country—its penal provisions should be uniform, and in all its essential characteristics it should be applicable to all parts of the State alike.

But this bill imposes an unequal burden on the citizens of the State. Equality—equality of right and privilege, of benefit and burden, is the cardinal doctrine of Democracy—the

fundamental principle of Republican philosophy. The burden imposed by the bill, though in name a license fee, is really a tax.

"The exaction of a license fee, with a view to revenue, is an exercise of the power of taxation." (Cooley on Const. Lim., 201, note 4.)

The burden being unequal, the bill is intrinsically unjust. No good reason exists why a heavier exaction should be imposed upon the saloon keeper in New York than upon the saloon keeper in Buffalo. It cannot be pretended that the business of the former can necessarily bear a heavier burden than that of the latter; nor is drunkenness a greater evil in New York than in Buffalo. Suppose a higher license fee were exacted of the lawyer, physician, merchant or plumber in Buffalo than in New York, would not all admit the inequality of the burden? If the measure be an evil, New York and Brooklyn should not alone be afflicted with it; if it be a benefit, New York and Brooklyn should not monopolize its advantages.

As before stated, a license fee is a tax imposed by the State, and, like every other tax, it should be just and equal in its operation. No partial legislation, no partial taxation, should be tolerated in our State. A license fee applicable to the whole State, and based upon the amount of business done, and graded proportionately, would not be open to the criticisms here suggested. A general statute fixing a reasonable minimum license fee to be charged in every city, and even in every town and village in the State, leaving the maximum sum to be determined by the local authorities everywhere, if not entirely satisfactory, would at least be free from the charge of favoritism and hypocrisy in its enactment. The United States liquor license fee is uniform throughout the State; the collateral inheritance special tax is the same in the cities of New York and Brooklyn as elsewhere; the regulations and penalties concerning the sale of oleomargarine are similar everywhere in the

State; the laws in regard to adulterated food apply to those cities with no greater severity than anywhere else. The truth is that no tangible or consistent argument whatever has been advanced why the unjust discrimination contemplated by this bill in respect to these two cities should be countenanced for a moment.

If the number of licensed places in those cities was very much greater than in the other cities of the State in proportion to the number of their inhabitants, there might be some plausible pretext or excuse for the exemption of the latter cities. But such is not the fact. On the contrary, the very reverse is the truth.

I have procured an accurate and official statement from the boards of excise in every city in the State, showing the number of licenses now in force in such cities, and the fact is established that of the cities of the State, (there being twenty-seven in all) in twenty of them the number of licenses therein is greater in proportion to the population than in the city of New York, and in all but one of them the number is greater in proportion to the population than in the city of Brooklyn. It is thus apparent that there is less necessity for legislative interference with, or legislative discrimination against, the cities of New York and Brooklyn, than for almost any other part of the State.

The following is a statement of the cities of the State—their population taken from the last census (1880),—the number of licenses now in force in each city,—and the number of licensed places to each thousand of inhabitants.

CITY.	Population, 1880.	No. of licenses.	No. of licenses per 1,000 of population.
Buffalo . . . . .	155,134	2,133	13.75
Utica . . . . .	33,914	432	12.74
Long Island City . . . . .	17,129	201	11.73
Syracuse . . . . .	51,792	602	11.63
Hudson . . . . .	8,670	99	11.42
Dunkirk . . . . .	7,248	77	10.62
Troy . . . . .	56,747	574	10.11
Albany . . . . .	90,758	902	9.94
Newburgh . . . . .	18,049	178	9.86
Elmira . . . . .	20,541	197	9.59
Yonkers . . . . .	18,892	179	9.47
Schenectady . . . . .	13,655	128	9.40
Lockport . . . . .	13,522	122	9.02
Rochester . . . . .	89,366	796	8.91
Rome . . . . .	12,194	107	8.77
Kingston . . . . .	18,344	160	8.72
Cohoes . . . . .	19,416	165	8.50
Oswego . . . . .	21,116	170	8.05
Binghamton . . . . .	17,317	135	7.80
Auburn . . . . .	21,924	160	7.30
<b>NEW YORK</b> . . . . .	1,206,299	8,765	<b>7.27</b>
Poughkeepsie . . . . .	20,207	143	7.07
Amsterdam . . . . .	11,710	80	6.83
Ogdensburg . . . . .	10,341	56	5.42
Watertown . . . . .	10,697	57	5.33
<b>BROOKLYN</b> . . . . .	566,663	3,012	<b>5.32</b>
Jamestown . . . . .	10,842	36	3.32

The towns and villages of the State make even a more favorable showing for New York and Brooklyn. By the following table it appears that out of twenty-three towns and villages situated in various parts of the State, and fairly illustrating the whole State, there are fourteen villages having a greater number of licenses, in proportion to their population, than New York, and that in none of the twenty-three is there a less number proportionately than in Brooklyn.

VILLAGE OR TOWN.	Population, 1880.	No. of licenses.	No. of licenses per 1,000 of population.
Wallkill . . . . .	11,486	65	5.66
Fishkill . . . . .	10,732	65	6.06
Hempstead . . . . .	2,521	16	6.35
Seneca Falls . . . . .	5,880	38	6.46
New Brighton . . . . .	12,679	83	6.55
Flushing . . . . .	6,683	44	6.59
Cortland . . . . .	12,664	84	6.63
Port Jervis . . . . .	8,678	61	7.03
Ithaca . . . . .	9,105	66	7.25
Cazenovia . . . . .	1,918	14	7.29
Saugerties . . . . .	3,923	29	7.39
Hornellsville . . . . .	8,195	61	7.44
Jamaica . . . . .	3,922	32	8.16
Lyons . . . . .	3,820	32	8.38
Coxsackie . . . . .	1,661	14	8.43
Green Island . . . . .	4,160	40	9.62
Catskill . . . . .	4,320	42	9.72
Geneva . . . . .	5,878	60	10.21
Batavia . . . . .	4,845	51	10.53
Corning . . . . .	4,802	54	11.25
Fonda . . . . .	944	14	14.83
Saratoga Springs . . . . .	8,421	150	17.81
Olean . . . . .	3,036	60	19.76
<b>BROOKLYN . . . . .</b>	566,663	3,012	<b>5.32</b>
<b>NEW YORK . . . . .</b>	1,206,299	8,765	<b>7.27</b>

Those who voted for the passage of this bill in the Legislature must have acted in ignorance of these facts, or else, in the commendable desire on their part to relieve New York and Brooklyn from the evils arising from the great number of licensed places therein, must have overlooked the greater danger at their own homes, and will appreciate the opportunity now afforded for further and more careful consideration of the subject.

*Second.* The second objection to this measure is that a portion of its provisions are clearly unconstitutional.

It appears that upon the third reading of the bill in the Assembly there was hastily, and without deliberation or previous reflection, added thereto the following clause :

“If any person, having a license of the second or fourth class, shall keep on hand on the premises licensed, any intoxicating liquors other than those permitted in his license, he shall be guilty of a misdemeanor, and his license shall be forfeited.”

This clause is not only seriously defective in not providing any method or manner of forfeiting the license or adjudicating the forfeiture, or judicially determining the guilt of the alleged offender, but assuming to act as judge, jury and executioner, it declares the party guilty, and forfeits his license without any further proceedings either by or against him. The decision of our highest court is, that this cannot be done. *Commissioners of Excise vs. Merchant*, 103 N. Y. 149. But it is also more than defective in form—it conflicts with the organic law of the State.

Liquors are recognized as property under our present Constitution, and by the decisions of the courts. Their sale may be regulated and restricted, but it cannot be prohibited ; they cannot be confiscated. What cannot be done directly cannot be done indirectly or by evasion. Yet this provision makes the mere “keeping on hand” of liquors—without any sale or intention to sell—a crime. This is a destruction of property or interference with its vested rights that is repugnant to the Constitution.

If this provision can be upheld, it would prevent the proprietor of a respectable restaurant from keeping in his establishment a bottle of brandy, even for his own family use. It would seem to be a preposterous provision, ill-conceived and badly framed.



I am advised by the law officer of the State—the learned Attorney-General—that this portion of the bill is unconstitutional. His opinion is concurred in by ex-Judge George F. Comstock, of Syracuse, one of the ablest and most distinguished jurists of the State. Their opinions are hereto annexed, and I am bound to accept them as conclusive of the questions involved.

I need hardly add that I cannot be expected to approve a measure that, in any particular, violates the Constitution.

Upon these two grounds before stated I distinctly place my objections to this measure. It is unnecessary to examine any others that may exist. The bill may or may not be satisfactory in other respects, but I am not called upon now to consider that question. It is sufficient for present purposes that there are at least two insuperable and conclusive objections to its approval, and beyond that it is not my duty to inquire. Upon the propriety of “high license,” so-called, I express no opinion.

I am not unmindful of the fact that there are many well-meaning people, with the best interests of the community at heart, having no accurate information as to the details of the bill, but influenced by the general statement, diligently and loudly proclaimed, that it is a reform measure, having for its sole purpose the decreasing of the number of licensed places, and a diminution of the evils of intemperance, by simply raising the money value or price of licenses, and who have unwittingly been led into the support of this bill; and there are pronounced temperance people who, apparently fickle in their opinions, have abandoned their previous efforts for prohibition, and latterly have come to believe, or who affect to believe, that the imposition of higher license rates would be more beneficial than prohibition; while, on the other hand, that other earnest, sincere, consistent and numerous class, known as prohibitionists, are honestly and boldly opposed to this bill, upon

the ground that they object to all licenses and all compromise measures, and believe that there is no adequate remedy for the evils complained of except entire prohibition.

Neither should it be forgotten that there is a large element of our population—citizens of German extraction—peaceable, law-abiding and industrious people, who have done much to build up our country and increase its prosperity, and whose customs and habits seem to require liberal regulations concerning license, and who are naturally opposed to all severe sumptuary laws. But whatever differences of opinion may exist among various classes upon the propriety of that kind of legislation which seeks to check intemperance by only raising the price of licenses, without any other restrictions or additional safeguards, and concerning which I do not now propose to state any views of my own, there can certainly be no serious dispute among thoughtful people that whatever law is enacted should not violate the Constitution, and that it should be equal and uniform in its operation.

While the question of temperance is not a party question, and cannot well be made such, yet it is impossible to ignore the political aspects of the measure, especially where it is well known that its support was made the subject of consideration at a party caucus of the majority of the Legislature, and where it has been ingeniously devised and peculiarly framed so as to operate solely upon the two great Democratic constituencies of the State, while Republican cities and constituencies are exempted from its burden.

The words of Governor Horatio Seymour, in a message to the Senate, as early as 1854, at a time of considerable excitement in regard to temperance legislation, concerning a bill from which he withheld his approval—a bill equally as unconstitutional and unwise as the one which I am now considering—are peculiarly applicable, and I concur substantially in the sentiments then so well expressed. He said :

"Judicious legislation may correct abuses in the manufacture, sale or use of intoxicating liquors; it can do no more. All experience shows that temperance, like other virtues, is not produced by law-makers, but by the influence of education, morality and religion.

"While a conscientious discharge of duty, and a belief that explicit language is due to the friends of this bill, require me to state my objections to the measure in decided terms, it must not be understood that I am indifferent to the evils of intemperance, or wanting in respect or sympathy for those who are engaged in their suppression. I regard intemperance as a fruitful source of degradation and misery. I look with no favor upon the habits or practices which have produced the crime and suffering which are constantly forced upon my attention in the painful discharge of official duties. \* \* \* Men may be persuaded—they cannot be compelled to adopt habits of temperance.

"I concur with many of the earnest and devoted friends of temperance in the opinion that it will hereafter be a cause of regret if the interest, which is now excited in the public mind upon that subject, should be diverted from its proper channels and exhausted in attempts to procure legislation, which must be fruitless."

As the chosen Executive of over five millions of people, I am not unmindful of the duties and obligations which attach to the consideration of this question. I am not unaware of, nor do I in the least ignore, the interest that is felt therein. I would encourage and increase that interest. Agitation will, in the end, secure beneficial results. The evils of intemperance are not hid in a corner; they cannot be concealed; to all they are patent, and to none more patent than to those who, as public servants, have to deal in any degree with the criminal law. It is not and it cannot be denied, that society is injured, that the State receives harm, that the character of a people is debased by the excessive, misguided and indiscriminating use of intoxicants. These evils exist in country and in town; these injuries touch both rich and poor. Whatever measures to promote sobriety and good morals may be deemed wise and proper, they should be applied wherever the evil aimed at exists; applied alike to rich and poor, alike to

country and to city. Such laws should be no respecters of persons or of localities.

Measures designed to check intemperance, to restrain its evils, to abate its injurious effects, and to correct the abuses resulting from it, are assuredly legitimate subjects for consideration by the highest authorities—legislative and executive—of the State. In the enactment of laws—just and equal in their application to all the citizens of the State—to promote such ends the Legislature will never fail to have my earnest and sincere co-operation. But legislation which, while assuming to be prompted by a desire to promote the public welfare, discovers itself as in reality devised to serve a partisan purpose—narrow, selfish, un-American—cannot be expected to receive Executive sanction.

DAVID B. HILL.

# APPENDIX No. I.

## OPINION OF THE ATTORNEY-GENERAL.

STATE OF NEW YORK.

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 8, 1887. }

*To the Governor of the State of New York:*

DEAR SIR—At your request I have examined the bill recently passed by the Legislature, entitled “An act to further amend chapter one hundred and seventy-five of the Laws of eighteen hundred and seventy, entitled ‘An act regulating the sale of intoxicating liquors.’”

There is one provision of this bill which, in my opinion, invades the property rights of the citizen, and is, therefore, in conflict with both the spirit and the letter of the Federal and State Constitutions. The language of the provision to which I

refer is as follows: "If any person having a license of the second or fourth class shall keep on hand, on the premises licensed, any intoxicating liquors, other than those permitted in his license, he shall be guilty of a misdemeanor, and his license shall be forfeited."

The bill provides that, in cities containing more than four hundred thousand inhabitants, there shall be five classes of licenses. The *second* class includes only licenses to sell malt liquors and wines to be drank on the premises. The *fourth* class authorizes the sale only of malt liquors and wines *not* to be drank on the premises. These provisions are the only ones necessary now to refer to, in order to show the general bearing of the objectionable provision.

It will be seen that the provision to which I have first referred makes it a criminal offense to keep on hand upon the premises licensed any intoxicating liquors other than those permitted in the license, *for any purpose whatever*. It is not a prohibition simply against keeping such liquors with an intent to sell the same or to violate the law; nor does it apply exclusively to liquors obtained by the party after the passage of the act, but in its broad provisions includes liquors which he owned and had in his possession before the enactment of the proposed legislation.

It cannot be denied that the Legislature has the power to regulate the sale of intoxicating liquors; but it is just as clear that it has not the power to legislate against their existence.

It is now, I suppose, universally admitted, and must be conceded, that intoxicating liquors, to be used as a beverage, are *property* in the most absolute and unqualified sense of the term, and as such, as much entitled to the protection of the Constitution as lands and houses, or chattels of any description whatever. *Wynehamer vs. The People*, 13 N. Y. 378.

The Constitution of this State provides, in article 1, section 1, that "no member of this State shall be disfranchised,

or deprived of any of the rights or privileges secured to any citizens thereof, unless by the law of the land or the judgment of his peers."

Section 6 of article 1 provides that "no person shall be deprived of life, liberty or property without due process of law."

And the fourteenth amendment to the Constitution of the United States provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Under the provisions of the bill, as has been before stated, a license of the second class permits the person holding it to sell only malt liquors and wines to be drank on the premises. A license of the fourth class permits the person obtaining it to sell only malt liquors and wine *not* to be drank on the premises. The prohibitory and penal provision before referred to makes it a criminal offense, indictable and punishable, for a person having a license to sell wine and beer to be drank on the premises, to keep on hand, on the premises licensed, any other intoxicating liquors. That is to say, any brandy, whisky, rum or gin, without regard to the purpose of its use or to the circumstances under which it came into, or is in his possession. If any thing but wine or beer is found upon the premises licensed he is guilty of a misdemeanor.

The objection to this legislation will be easily perceived by inquiring what, under this law, is the condition of a person having spirituous liquors on hand at the time of its passage. Suppose that a citizen of New York or Brooklyn, upon the day when this law takes effect, has in his possession not only wine and beer but also whisky, brandy or gin. He may have been engaged for a long time before the passage of the law

in the sale of all these articles. But he obtains, after the passage of the act a license of the second class; that is, a license to sell wine and beer only. But he allows the brandy, whisky or gin to remain in his place of business, as before. He has no license to sell it and he may have no intention to sell it, but in order to save himself from this penal provision he must destroy it, sell it or get rid of it in some way. He cannot allow it to remain upon the premises licensed.

If a person is the owner of property he may, under the law, keep it in some convenient place, and the Constitution, in my judgment, protects him in the right to keep spirituous liquors for safe-keeping, storage or convenience, upon the premises licensed to sell beer and wine only. An attempt to deprive him of the right to keep this property on his own premises is a practical denial of his ownership. He may take out a license to sell malt liquors and wines under the regulations prescribed by law, but the fact that he has taken out a license under the law to regulate the sale of one thing cannot interfere with his right to hold and keep other property. As I have before suggested, the guilt of a party under this law does not depend upon his keeping spirituous liquors upon premises licensed to sell beer and wine only when such keeping is with intent to sell or to violate the law. His keeping it on hand on the licensed premises may be ever so innocent, may be in fact necessary in order to preserve his property, but under this law he would still be liable to indictment and punishment. I do not think it is within the power of the Legislature to pass a law subjecting the citizen to criminal liability for such an act. It has no power to pass a law making it a misdemeanor for a person who owns and is in possession of spirituous liquors, at the time of the passage of this act, to hold, own and keep the same upon his premises, though he should apply for and obtain a license to sell malt liquors only.

From an inspection of the printed bill it is apparent that the provision which I have been considering was not a part of the original scheme of legislation. It was inserted, I assume, by amendment, when the original bill was in progress through the Legislature, and when read in connection with the provision to which it was added, a singularly contradictory and incongruous result is produced. This will be seen by quoting the new and the original provisions as they now appear in the bill, which is in the following language: "Persons not licensed may keep and in quantities not less than five gallons at a time, sell and dispose of strong and spirituous liquors, wines, ale and beer, provided that no part thereof shall be drank or used in the building, garden or inclosure communicating with, or in any public street or place contiguous to, the building in which the same be so kept, disposed of or sold. If any person having a license of the second or fourth class shall keep on hand on the premises licensed any intoxicating liquors, other than those permitted in his license, he shall be guilty of a misdemeanor and his license shall be forfeited."

The first clause of this provision seems to permit a person, not having a general liquor license, but having a wine and beer license, to keep and sell in quantities not less than five gallons at a time spirituous liquors, while the last clause makes it a misdemeanor for him to keep such liquors on hand on the premises licensed.

The two clauses united would constitute a criminal enactment exceedingly unsafe and obscure when the liberty of a citizen is involved. This feature of the proposed legislation should not be overlooked while considering the graver constitutional objections that I have mentioned.

Very respectfully,

Your obedient servant,

D. O'BRIEN,

*Attorney-General.*



## APPENDIX No. 2.

OPINION OF THE HON. GEORGE F. COMSTOCK, EX-JUDGE OF  
THE COURT OF APPEALS.

At the request of parties interested, I have examined the act, recently passed by the Legislature, amending an act passed in 1870, entitled "An act regulating the sale of intoxicating liquors." My opinion is asked as to the constitutionality of the last clause of the last section, which is in the following words:

"If any person having a license of the second or fourth class shall keep on hand, on the premises licensed, any intoxicating liquors other than those permitted in his license, he shall be guilty of a misdemeanor, and his license shall be forfeited."

This act provides that in cities containing more than four hundred thousand inhabitants there shall be five classes of licenses. The *second* class includes only licenses to sell malt liquors and wines to be drank on the premises; the *fourth* class, only malt liquors and wines *not* to be drank on the premises. For the purpose now in view it is unnecessary to refer to other portions of the act. It will be seen that the prohibition in the above penal clause is against *keeping* any liquors except malt liquors and wines.

The Legislature has unquestionably the right to regulate the sale of intoxicating liquors, but not to legislate plainly and palpably against their *existence as property*. All property is placed under the same constitutional protection. In the case of *Wynehamer vs. The People*, reported in the 13th of the New York Reports, a severely prohibitory law came before the Court of Appeals for its consideration, and the act was adjudged to be unconstitutional. As a member of the court at that time, it became my duty to render an opinion, which I did at considerable length, and with the care which so impor-

tant a subject demanded. I have not changed my views, and, without repeating, refer to them now.

I do not see how the clause above quoted in "The High License Act," as it is called, can be sustained. It makes it a criminal offense, indictable and punishable, for a person, having a license to keep and sell *malt liquors and wines*, to own, or keep at all, brandies and other liquors than beer and wines. This seems to me prohibition under a thin disguise. If a person owns property he may certainly keep it in some convenient place; and the denial of the right to keep it on his own premises is a practical denial of his ownership. He may take out a license and sell malt liquors and wines under regulations prescribed by law, but I am not able to see how the taking out of a license to regulate the sale of one thing can interfere with his right to hold and keep other property.

GEORGE F. COMSTOCK.

*April 9, 1887.*

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MEMORANDUM FILED WITH ASSEMBLY BILL No.  
168, EXTENDING THE JURISDICTION OF THE  
PARK COMMISSIONERS OF NEW YORK CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 19, 1887.* }

*Memorandum filed with Assembly bill No. 168, entitled "An act in relation to the jurisdiction of the department of public parks in the city of New York over certain streets and avenues in said city," which, not having been returned to the house in which it originated within ten days, became a law pursuant to article IV, section 9 of the Constitution.*

I cannot resist the impression that this legislation is of doubtful propriety. While it is proper that the jurisdiction of

the park commissioners should extend to the parks and also over the streets which immediately border thereon, it seems to me somewhat questionable whether it is wise to commence extending their jurisdiction over other streets simply because such streets may be deemed to connect one park with another.

It is a safe rule to adhere to the policy of keeping all the streets under the jurisdiction and control of the superintendent of public works and the parks under the control of the park department, and to insist that one department should not be permitted to encroach upon the other. I fear that in the future there will be a clamor to place other streets running between Central Park and Riverside Park under the control of the park commissioners, and I imagine that the moving cause for the present legislation is real estate speculation, and that the scheme is not really for the benefit of the city, but principally for the advantage of real estate owners on the streets affected by the bill, and that it will afford a pernicious precedent. I hope, however, it may prove that my suspicions are unfounded.

Last year a similar bill, which remained in my hands at the adjournment of the Legislature, was not approved, but the Legislature in its discretion having again passed the measure, and this year it being favored by the local authorities and not opposed by the superintendent of public works, and no particular opposition having been manifested toward it, and many good citizens appearing to favor it, I have with some reluctance concluded to permit the same to become a law without my signature.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 197, FOR THE RELIEF  
OF TOWNS BONDED IN AID OF THE NEW YORK  
AND OSWEGO MIDLAND AND OTHER RAIL-  
ROADS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April* 19, 1887. }

*To the Assembly :*

Assembly bill No. 197, entitled "An act for the relief of towns bonded in aid of the New York and Oswego Midland, and the Syracuse Northern railroads, and the Pittsburgh, Lackawanna and North Eastern Railroad Company," is herewith returned without approval.

By the provisions of the Revised Statutes, as amended by chapter 315 of the Laws of 1886, and as now in force, when the line between two towns divides a farm or lot, the same shall be taxed, if occupied, in the town where the occupant resides; if unoccupied, each part shall be assessed in the town where the same shall lie.

This bill proposes to change such system of taxation and assessment, in special towns, for a specified period, so that in such towns during such period real estate, whether occupied or unoccupied, shall be assessed and taxed in the town where the same shall lie; and after the expiration of such period such towns are to return to the present system.

The towns selected for the operation of this special legislation are the several towns in this State bonded to aid in the construction of three specified railroads, to-wit: the New York and Oswego Midland, the Syracuse Northern, and the Pittsburgh, Lackawanna and North Eastern. The period selected for the duration of this special legislation is until such bonds shall be paid.

If the present system of assessing occupied farms and lots intersected by town lines is inequitable, it is evident that such inequities will be felt more forcibly in the towns which are now paying their railroad bonds. But if the present system is just and fair for raising the lighter taxes for ordinary expenses, it is proportionately just and fair for raising the heavier taxes of bonded towns. If the experience of the bonded towns has served to call attention to any injustice in the present system, then the present system should be amended by general legislation.

If this bill would be a benefit to the special towns selected for its application, such benefit can more properly be gained by a general law securing to every town in the State its due proportion of any advantage to be derived from a more just and equitable system.

DAVID B. HILL.

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MESSAGE WITHDRAWING THE NOMINATIONS OF  
JAMES A. BUCKBEE AND WILLIAM A. ARM-  
STRONG AS RAILROAD COMMISSIONERS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 20, 1887.* }

*To the Senate :*

The nomination of James A. Buckbee of Greenbush for the office of Railroad Commissioner in the place of William E. Rogers, whose term of office had expired, and the nomination of William A. Armstrong of Elmira for the office of Railroad Commissioner in the place of John O'Donnell, whose term of office had expired, not having been acted upon by your honorable body, although the nominations were made twenty days ago, I hereby withdraw the same.

DAVID B. HILL.

MESSAGE TO THE SENATE IN THE MATTER OF  
NOMINATIONS TO OFFICE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 22, 1887. }

*To the Senate :*

The Constitution and laws of the State impose upon the Executive the duty of nominating to the Senate persons to fill the places of officials whose terms of office have expired.

The Constitution contemplates that the Senate will either confirm or reject such nominees within a reasonable time. If the Senate, in its wisdom, sees fit to reject the nominees, the Executive is thereby enabled to transmit other names for its consideration. With all due respect to the Senate, it is submitted that the spirit, if not the letter, of the Constitution requires that some action should be taken upon nominations transmitted by the Executive, and that they should not be "hung up" indefinitely without decisive action thereon.

Last year, upon the expiration of the term of office of Railroad Commissioner, I duly transmitted to your honorable body the nomination of Edward A. Durant, but no action was taken thereon. He was neither confirmed nor rejected. This year, on March 2d, I nominated to the same office ex-Senator James Arkell, but no action was taken thereon. The Senate neglected either to confirm or reject this nomination, and on March 17th his name was withdrawn. There was no complaint, so far as could be learned, that there was not ample time afforded to ascertain his fitness and qualifications for the position; nor was there any intimation that further time was needed or desired therefor. On March 17th Michael Rickard was nominated to the same position, and the same course was pursued in respect to him. His nomination was never consid-

ered for a moment in executive session. After waiting fourteen days for some decisive action to be taken, his nomination was likewise withdrawn.

On April 1st William A. Armstrong was nominated to the same office, and on the same day James A. Buckbee was nominated for the other Railroad Commissionership, the term of which had also expired. The nominations were neither confirmed, rejected, nor in any way acted upon by the Senate in executive session or otherwise. For twenty days these two nominations remained pending before your honorable body, affording ample time, as it was believed, to enable all necessary information to be obtained concerning the fitness of these nominees for the positions for which they were named. It was understood that Mr. Armstrong was well known to the Senate, and the other nominee lived almost within the very shadow of the Capitol.

On April 20th the Senate refused, by a vote of twenty to twelve, to go into executive session for the purpose of considering these nominations. The Executive could not compel action thereon, neither could he transmit other nominations so long as these were before the Senate. The only course left to him was to withdraw them, which was accordingly done on the afternoon of April 20th, their names having remained before the Senate for twenty days, and the nominations of Messrs. Rogers and Baker were transmitted in their places.

It is also a matter of public notoriety, undisputed by any one, that all of these nominations had been discussed in a party caucus of a majority of the Senate, and the conclusion reached that the nominations should not be acted upon by the Senate.

With this brief history of these nominations, it is respectfully submitted that the Executive has not been lacking either in respect or courtesy to the honorable Senate, and that every possible effort has been made, consistent with duty, to give to

the people faithful and competent officials, and to present to the Senate names which it was hoped might prove satisfactory.

But it was claimed in the public debate had in the Senate at the time of the withdrawal of the names of Messrs. Armstrong and Buckbee, that their nominations had not been made in good faith or with any desire for their confirmation, and it was intimated or insinuated that if further time had been allowed, the nominations might receive favorable consideration. In this manner it was sought to throw upon the Executive the responsibility for their non-confirmation, which, it is respectfully submitted, properly belongs to the Senate. These nominations had been transmitted the same as all those which had preceded them, in the utmost good faith, and with a desire to afford the Senate the most ample opportunity for favorable action, but no action having been taken thereon for twenty days and the Senate having refused to enter into executive session, moved for the express purpose of considering them, it was not believed that any further time was required or really desired. Under such circumstances the Executive was justified in assuming that the Senate had no intention of confirming these nominations.

I seek by this communication to inform the Senate that I respectfully decline to be placed in any false position on the one hand, or to do the Senate any injustice or discourtesy on the other. If the Senate actually desires further time to consider the nomination of Messrs. Armstrong and Buckbee, or is now desirous of confirming them, I am anxious to oblige your honorable body. If by resolution or in some other proper formal manner the Senate shall communicate its desire or willingness to consider these nominations, or to confirm them, I announce to the Senate that I will cheerfully withdraw the present nominations and re-transmit the nominations of Messrs. Armstrong and Buckbee for its favorable action.

I await the pleasure of the Senate in this matter.

DAVID B. HILL.



VETO, ASSEMBLY BILL No. 691, TO INCORPORATE  
THE Y. M. C. A. OF OGDENSBURGH.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1887. }

*To the Assembly:*

Assembly bill No. 691, entitled "An act to incorporate the Young Men's Christian Association of Ogdensburgh, St. Lawrence county, New York," is herewith returned without approval.

These useful and beneficent associations are ordinarily incorporated under the general act, chapter 319 of the Laws of 1848, commonly known as the "Benevolent Societies" Act. Many important advantages are afforded by incorporation under the general act which are lost under a special act of incorporation like the present. Under the general act the management of the association is much more elastic and within the control of the association itself; the association can amend its certificate of incorporation and change its constitution as emergencies arise. But the detailed provisions of this special act can only be modified by new legislative action, requiring frequent and annoying applications to the Legislature for such modifying regulations as ought to be within the powers of the association itself.

The only provision of this special act which could not be gained under the general act is the establishment of a board of trustees to hold and manage the corporate assets, separate from the board of directors, by whom "said corporation shall be managed." The provisions of this bill are already in conflict as to the respective duties of these two boards, and conflicts between the two boards themselves in practical administration would be unavoidable.

The additional security sought to be gained by a dual management must be largely delusive. If such dual management be an advantage, it does not counterbalance the advantages of incorporating under the general act; but if of sufficient importance for legislative interference in this special case, it is also of sufficient importance to be embodied, by proper amendment, in the general act.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 275, TO IMPROVE THE  
STATE DITCH IN THE TOWN OF SALINA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1887. }

*To the Assembly :*

Assembly bill No. 275, entitled "An act to provide for the improvement, enlargement, and the removal of obstructions from the channel of the State ditch, running from Liverpool to Mud Lock, in the town of Salina, county of Onondaga, and to improve the sanitary condition thereof by making provisions for taking proper care of the overflow or leakage of water from the Oswego canal and the accumulation of water in said ditch, and appropriating certain moneys for such purpose," is herewith returned without approval.

My only objection to this bill is that it seems to require the Superintendent of Public Works to make the expenditure provided for, instead of merely authorizing the same in his discretion. This objection can be obviated by a simple amendment to the present bill.

It is but fair to state that this bill was intended to be recalled for amendment on Friday last, but on account of the

sudden adjournment of the Senate the resolution passed but one house—the Assembly—in consequence of which I am compelled to take this action of disapproval.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 751, TO IMPROVE THE  
SALMON RIVER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1887. }

*To the Assembly :*

Assembly bill No. 751, entitled “An act to provide for the protection of the banks of the Salmon river from injury in its use as a public highway and making appropriation therefor,” is herewith returned without approval.

This bill appropriates two thousand dollars, or so much thereof as may be necessary, for erection of proper dykes in the village of Sand Bank, town of Albion, Oswego county, upon the banks of the Salmon river, to protect the banks of the river and repair the injury thereto caused by the use of the river as a public highway.

This bill is open to several serious objections.

*First.* The bill does not merely authorize but absolutely requires the Superintendent of Public Works to perform the proposed work, allowing him no discretion in determining whether or not the work should be undertaken by the State. This alone is a sufficient objection to the bill.

*Second.* The Salmon river was declared a public highway by section 8 of chapter 793 of the Laws of 1871, entitled “An act to incorporate the Salmon River Improvement Company.” The object of such corporation, as declared by said act, was to improve Salmon river and make the same navigable for

the floating and running of logs and timber; and said corporation was, by said act, authorized to make such improvements without expense to the State, and to use said river for floating logs therein. Section 7 of said act provides for ascertaining and adjusting, by commissioners, any damages to the banks of said river occasioned by the use of the river as a public highway by said company. Whether or not this bill is an attempt to saddle upon the State the damages which said company were to pay for the privileges they gained by said act, it is not necessary now to determine. It is sufficient to say that this bill proceeds upon an entirely erroneous theory of the effect of an act declaring a stream to be a public highway. Such an act cannot, without compensation, change the title to the bed or the rights to the waters of the stream, but can only regulate the use of public rights already existing. (*Chenango Bridge Co. vs. Paige*, 83 N. Y. 178-185.) Neither the State nor any of its citizens can acquire new rights by such an act, and the State in no way becomes liable for the damages occasioned to the banks of the stream by the legitimate use thereof as a public highway. If the damages to the banks are caused by an improper use of the river, the persons causing the damage are alone liable, and the State should not pay for their misconduct.

*Third.* This bill proposes to appropriate public moneys for private or local purposes. (*The People vs. Allen*, 42 N. Y. 378.) It does not appear to have received the assent of two-thirds of the members elected to each branch of the Legislature, as required by the Constitution. The executive approval of the bill would, therefore, be at best a nullity.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 745, RELATING TO  
AGRICULTURAL SOCIETIES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1887. }

*To the Assembly:*

Assembly bill No. 745, entitled "An act to enable agricultural and horticultural societies to extend a more perfect protection to their property and the property of exhibitors at fairs, and to allow the board of managers to appoint a police for that purpose," is herewith returned without approval.

This bill, without any reference to previous legislation, reenacts, word for word, chapter 36 of the Laws of 1859, as it stood prior to the Repealing Act of 1886 (chapter 593), which repealed section 2 only of the act of 1859, so that sections 1 and 3 of this bill are simply repetitions of sections 1 and 3 of the act of 1859 as now in force.

The repealed section 2 of the act of 1859 was substantially incorporated in sections 446 and 648 of the Penal Code, except the provisions that fines are to be paid into the treasury of the society. This last provision is the only substantial change in the law which would be affected by this bill. Such change, if desirable, could be easily accomplished by a simple amendment to section 726 of the Code of Criminal Procedure. Or, if it is desirable to preserve accurately all the provisions of this bill, the simple and proper method would be, restore section 2 of the act of 1859 as it stood prior to its repeal by the act of 1886.

It is unwise to encumber the statute books with duplicate acts or parts of acts. The Legislature should seek to simplify rather than to increase the present confusion of the statutes.

Without passing upon the substantial merits of this bill, its method is so directly the reverse of the proper tendency above indicated, as to justify withholding the executive approval.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 591, TO PREVENT THE  
SPREAD OF DISEASE IN PEACH TREES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1887. }

*To the Assembly.*

Assembly bill No. 591, entitled "An act to prevent the spread of the disease in peach trees known as the yellows," is herewith returned without approval.

Several defects in the form of this bill are so serious as to necessitate withholding the executive approval. The most serious of the defects are the following:

*First.* The omission of the words "knowingly and wilfully" in the first line of the first section would, in effect, render any person guilty of a misdemeanor whose trees became infected with the disease specified, or who, unawares, offered for sale any of the fruit thereof.

*Second.* Section seven provides that all the costs, charges, expenses and disbursements of the commissioners to be appointed, and of the town board "may be recovered by the town from the owner of said diseased fruit, or from the owner of the premises on which said diseased trees stood, in an action of assumpsit." This provision seems to contemplate that there shall be but one such owner of diseased trees or fruit in the entire town. It is also questionable whether an "action of assumpsit" is recognized by the Code of Civil Procedure.

It is but fair to state that this bill was intended to be recalled for amendment on Friday last, but on account of the sudden adjournment of the Senate the resolution passed but one house—the Assembly—in consequence of which this action of disapproval is rendered necessary. If a new bill is framed which will meet the objections stated, I will approve it.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 270, TO AUTHORIZE THE  
CORTLAND OPERA HOUSE COMPANY TO MORT-  
GAGE ITS PROPERTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 25, 1887. }

*To the Assembly:*

Assembly bill No. 270, entitled "An act to authorize the Cortland Opera House Company to execute its mortgage to pay certain indebtedness," is herewith returned without approval.

The Cortland Opera House Company was incorporated under the general act of 1875 (chapter 611) for the organization of business corporations. The experience of this company, in attempting to mortgage its real estate, has disclosed a defect in the general act of 1875, which should be remedied by amendment to the general act, and not by a special act for every corporation organized thereunder. This bill is constructed on the theory that each one of the many corporations organized, and to be organized, under the act of 1875, must come to the Legislature for a special act before its real estate can be mortgaged. Thus the business of the corporations is delayed, and the valuable time of the Legislature is frittered away in preparing and examining a multitude of special bills,

the purposes of which could be effectually accomplished by one single amendment to the general act.

Section 13 of the act of 1875, which provides that corporations organized under said act may borrow money on their bonds, should be amended by adding authority also to mortgage with the usual limitations. Such an amendment would render this bill, and the multitude of similar bills otherwise to follow, wholly unnecessary.

DAVID B. HILL.

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VETO, SENATE BILL No. 319, TO INCORPORATE THE  
NEW YORK INVESTMENT COMPANY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 25*, 1887. }

*To the Senate :*

Senate bill No. 319, entitled "An act to incorporate the New York Investment Company," is herewith returned without approval.

Numerous companies similar to the one proposed by this bill are being organized in various parts of the country. There is no general law in this State providing for their incorporation. The object of this bill, and of the many similar bills likely to follow, some of which are already on their way, should be accomplished, once for all, by a carefully-framed general law providing for the incorporation of investment and trust companies.

Executive disapproval seems to be the only method of bringing about a substitution of salutary general legislation for the multitude of special bills which waste so much of the Legislature's time and of the people's money.

DAVID B. HILL.



MESSAGE TO THE SENATE WITHDRAWING THE  
NOMINATIONS OF ISAAC V. BAKER, JUNIOR,  
AND WILLIAM C. ROGERS, AS RAILROAD COM-  
MISSIONERS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 25, 1887.* }

*To the Senate :*

The nominations of Isaac V. Baker, Junior, of Comstock's Landing, for the office of Railroad Commissioner, in the place of William C. Rogers, whose term of office had expired, and the nomination of William C. Rogers, of Garrisons, for the office of Railroad Commissioner, in the place of John O'Donnell, whose term of office had expired, are hereby withdrawn.

DAVID B. HILL.

[NOTE.—On even date with the above message, the nominations of William A. Armstrong, of Elmira, and James A. Buckbee, of Greenbush, were again transmitted to the Senate. On the fifth day of May following, the Senate voted to reject such nominations, and at a subsequent date, Messrs. Baker and Rogers, having been again nominated for the positions of Railroad Commissioners, the Senate confirmed their appointment.]

VETO, ASSEMBLY BILL No. 585, TO ENABLE THE  
VILLAGE OF WEST TROY TO MAKE A CON-  
TRACT WITH A WATER-WORKS COMPANY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,                    }  
ALBANY, *April* 26, 1887. }

*To the Assembly :*

Assembly bill No. 585, entitled "An act to authorize the commissioners of sewers of the village of West Troy to contract with the West Troy Water-works Company for a supply of water for flushing the sewers of said village," is herewith returned without approval.

Section 5 of chapter 737 of the Laws of 1873, as amended by section 1 of chapter 422 of the Laws of 1885, authorizes the board of trustees of any village incorporated under general or special act, to contract for a term of one year or more with any water company organized under the laws of this State, for the delivery by said company of water, through hydrants or otherwise, for fire, sanitary or other public purposes. This general act fully authorizes the village of West Troy to carry out all the purposes of this bill, in substantially the same manner proposed by the bill.

It is unfortunate that the time of the Legislature should be occupied with special legislation for purposes already covered by general laws.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 614, TO PROVIDE FOR  
AN IRON BRIDGE OVER CATSKILL CREEK,  
GREENE COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 27, 1887. }

*To the Assembly:*

Assembly bill No. 614, entitled "An act to authorize the construction and maintenance of an iron bridge over the Catskill creek, about one mile northerly of the village of Cairo, in the town of Cairo, county of Greene, and to authorize the said town to borrow the money necessary therefor," is herewith returned without approval.

This bill does not merely authorize but absolutely directs the town commissioner of highways to erect the bridge. How can the Legislature be sufficiently well informed of the local situation to intelligently take away from the local authorities all discretion as to whether or not a bridge should be erected in this town? How is the Legislature or the Executive to know whether a bridge is needed "over Catskill creek, about one mile northerly of the village of Cairo, in the town of Cairo, county of Greene," or whether the people of the town who are to pay for the bridge desire to do so? The first principles of local self-government, lying at the foundation of our political structure and constituting the most fundamental safeguards of individual liberty, require that the determination of such a question should be left to the local authorities directly interested.

Accordingly we find that as early as 1838 an act was passed (chap. 314), which has not since been expressly repealed, providing that the board of supervisors of each county in this State shall have power, whenever lawfully convened, to cause to be levied and collected such sums of money as may be

necessary to construct and repair bridges therein; to prescribe upon what plan and in what manner the moneys so to be raised shall be expended; and to apportion such tax among the several towns and wards of their county, as shall seem to them to be equitable and just.

The Court of Appeals in 1854 (*Hill agst. Supervisors*, 12 N. Y. 52, at pp. 59 and 60), in construing this act, say: "A very large number of special acts of the Legislature has been passed between 1830 and 1838 providing for particular expenditures in the erection and repair of bridges. \* \* About two hundred acts in relation to bridges and bridge companies are to be found in the Session Laws during the period above referred to. \* \* The general purpose of the provisions on this subject of the act of 1838, was to obviate the evil which had rendered necessary so frequent applications to the Legislatures, by conferring upon the boards of supervisors a further and new discretionary power from time to time to aid in the construction and reparation of bridges within their respective counties. \* \* By its terms the only limitation of the subject in respect to which the power is to be exercised is, that the bridges are to be in the county."

This language, used by the Court of Appeals over thirty years ago, is still applicable to the persistent tendency to over-legislation in the same line, of which this bill is one of the many illustrations.

Still another general law, which remains unrepealed, was enacted in 1869 (chapter 855), sections 1 and 2 of which, as amended by chapter 250 of the Laws of 1882, provide that boards of supervisors shall have power to provide for the location, erection or repair of any bridge, except over navigable streams (this very creek has been adjudged not to be a navigable stream within this statute. *People vs. Meach*, 14 Abb., N. S., 429), and for the apportioning the expense of any bridge upon such town for the purpose aforesaid. This stat-

ute was construed by the Court of Appeals in 1876 (*People, ex rel. Atkinson, vs. Tompkins*, 64 N. Y. 53), sustaining the authority of the board of supervisors to act in such matters.

Still a third general law was passed upon this subject in 1875 (chapter 482), subdivision 6 of section 1 of which, as amended by chapter 451 of the Laws of 1885, and as still in force, provides that boards of supervisors may, upon the application of any town liable to taxation, in whole or in part, for the erection of any bridge, made by a majority of the electors thereof, voting at a regular town meeting, or at a special town meeting called for that purpose, or upon the application of the supervisor, with the consent of the commissioner of highways, town clerk and justices of the peace of the town, authorize such town to erect the bridge and to borrow such sums of money as may be necessary therefor.

Here are three general acts already in existence, each of which provides for a determination by the local authorities of the necessity of this bridge, and fully equips such authorities with power to carry out such determination, the first act by levying and collecting the necessary tax, and each of the two latter acts by authorizing the town to borrow the necessary money.

I have been thus explicit in order to emphasize, if possible, to this Legislature the folly of wasting its valuable time in the latter days of its session, and of wasting the time of the Executive by undertaking to do supervisors' work, which the supervisors, by force of their situation, are much more competent to perform. Had the time spent on this bill been devoted to a revision and consolidation of the various general statutes upon this subject, so that ordinary local officers might be able to understand the statutes without the aid of a skilled lawyer to harmonize their overlapping provisions and to extract their combined meaning, then a substantial and permanent product would have resulted from the labors of the Legislature.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 934, TO LEGALIZE THE  
ACTS OF JOSEPH F. STIER, NOTARY PUBLIC.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April* 29, 1887. }*To the Assembly :*

Assembly bill No. 934, entitled "An act to legalize the official acts of Joseph F. Stier as notary public," is herewith returned without approval.

If a notary public pays so little attention to his office as not to know when his term expires, he should take the consequences of his own negligence.

I have heretofore refused to approve a general act for the wholesale legalization of the illegal acts of notaries public, and the same reasons apply to each special act for a like purpose.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 609, TO ENABLE THE  
OTSEGO COUNTY AGRICULTURAL SOCIETY TO  
MORTGAGE ITS REAL ESTATE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April* 29, 1887. }*To the Assembly :*

Assembly bill No. 609, entitled "An act to enable the Otsego County Agricultural Society to mortgage its real estate," is herewith returned without approval.

This bill recites that the society in question was organized under the general act of 1855 (chapter 425). This act does not provide for mortgaging the real estate of corporations

organized thereunder. Section 7 of the act of 1855 does, however, provide for the sale of the real estate of such corporations by leave of the Supreme Court. If this section should be amended by adding also power to mortgage under like conditions, then it would not be necessary for each of these corporations, in turn, to apply to the Legislature whenever a mortgage of its real estate may become necessary. The return of this bill without Executive approval will probably cause the general law to be so amended.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 933, TO CONSOLIDATE  
ROAD DISTRICTS IN NEW BALTIMORE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 29, 1887. }

*To the Assembly :*

Assembly bill No. 933, entitled "An act to provide for the consolidation of certain road districts and the working and better repairing of certain roads and streets in the town of New Baltimore, Greene county, New York," is herewith returned without approval.

Article III, section 18 of the Constitution of this State provides that the Legislature shall not pass a private or local bill for working roads or highways.

The Court of Appeals (People, ex rel. Commissioners, *vs.* Banks, 67 N. Y. 568-574) has declared that "this provision was designed to prevent any interference with the general highway system of the State, or with the keeping of the ordinary highways and public roads in repair under that system."

This bill comes within one of the classes of special legislation discountenanced by the Constitution.

DAVID B. HILL.

VETO, ASSEMBLY BILL, NOT PRINTED, RELATING  
TO THE ROAD COMMISSIONER FOR FISHKILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 29, 1887. }

*To the Assembly :*

Assembly bill, not printed, entitled "An act to provide for the appointment of a road commissioner in the town of Fishkill, Dutchess county," is herewith returned without approval.

This bill proposes to abolish the office of commissioner of highways in the town of Fishkill, and to substitute for such officer a road commissioner to be appointed by the supervisor, town clerk and justices of the peace of the town, to have the same powers and authority and to be subject to the same duties and liabilities as commissioner of highways, with certain specified exceptions, the most important of which is that such other town officers are to be associated with the road commissioner in the performance of his principal duties.

Certainly one man can be found in the town of Fishkill who is competent to perform all the duties imposed by law upon a commissioner of highways, without calling to his assistance the supervisor, town clerk and justices of the peace, who are supposed to be elected with reference to the performance of wholly separate duties. With seven officers to take charge of the highways of this town, no one of them would take any special interest therein, or could be held responsible for the management thereof. Neither does there appear to be any reason why the people of the town of Fishkill cannot be trusted to elect their commissioner of highways as safely as the people in the other towns of the State.

But apart from the adaptability of this bill to the particular town of Fishkill, the bill carries upon its face its own con-



demnation as a pernicious specimen of special legislation. To allow such a bill to become a law would be to begin the transformation of a uniform system of highway administration throughout the State into a heterogeneous mass of ill-digested varieties, each town having a law unto itself, and requiring new special legislation for every change desired.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 292, TO AMEND THE  
CHARTER OF ELMIRA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 29, 1887. }

*To the Senate:*

Senate bill No. 292, entitled "An act to amend chapter three hundred and seventy of the Laws of eighteen hundred and seventy-five, entitled 'An act to amend and consolidate the several acts relating to the city of Elmira,'" is herewith returned without approval.

This bill proposes to regulate political primaries and conventions for the nomination of city officers in said city, and to make the violation of any of the provisions thereof a misdemeanor.

There are only three serious objections to the bill:

*First.* It is unconstitutional.

Article III, section 16 of the Constitution provides that no private or local bill shall embrace more than one subject, and that shall be expressed in the title. The charter of the city of Elmira is a local act. If the title of a bill purports to amend such charter, the contents of the bill must be such as come strictly within the scope of municipal purposes, such as properly pertain to the administration of the city's corporate

affairs. The regulation of party caucuses is no more germane to municipal government than would be a requirement that certain contracts between the inhabitants of the city must be in writing.

*Second.* If the provisions of this bill are meritorious, its merits should not be confined to the city of Elmira, but should be extended at least to all other cities similarly situated.

*Third.* It is well known that a general bill for the regulation of political primaries and conventions is now pending in the Legislature, which, if passed, will apply to the city of Elmira and render the bill herewith returned unnecessary. A carefully-framed general act which will fulfill the beneficent intentions of this bill will be much preferable to any special legislation.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 784, FOR REPAVING OF  
NINETEENTH STREET, NEW YORK CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 30, 1887. }

*To the Assembly :*

Assembly bill No. 784, entitled "An act to provide for the repaving of Nineteenth street in the city of New York from First avenue to East river," is herewith returned without approval.

The object of this bill is to transfer the expense of such repaving from the adjoining property-owners to the city. This bill has received the formal disapproval of the local authorities, upon the ground that such adjoining property is now held by virtue of original grants from the city, made upon the express condition that the grantees and their successors

should at all times keep such street properly paved. In any event, there seems to be no sufficient reason for excepting the repaving of this portion of Nineteenth street from the operation of the present laws regulating the same.

DAVID B. HILL.

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MEMORANDUM FILED WITH SENATE BILL No. 97,  
TO REGULATE THE PRICE OF ILLUMINATING  
GAS IN BROOKLYN. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 3, 1887. }

*Memorandum filed with Senate bill No. 97, entitled "An act to regulate the price of illuminating gas in the city of Brooklyn." Approved.*

It would have been preferable if, instead of the passage of this measure regulating the price of gas in Brooklyn by act of the Legislature, there had been passed a general law providing for the creation of a State gas commission, whereby the price of gas in Brooklyn, as well as the rest of the cities of the State, could be determined by a fair and impartial tribunal after an investigation of all the facts and a hearing of all the parties interested. That would have been a more satisfactory disposition of this matter.

The practice of annually appealing to the Legislature in such matters should not be encouraged, and the price of gas should be determined by a commission. But this measure having passed the Legislature with great unanimity, and the propriety of some reduction in Brooklyn being so clear, I have felt it incumbent upon me to approve this bill.

If it shall hereafter be demonstrated that any injustice has been done any of the gas companies in Brooklyn, I will next

year cheerfully recommend that the wrong be remedied in some shape.

Having last year approved a bill fixing the price of gas to be charged in New York city, I cannot consistently withhold my approval from this measure. I trust that next year a State commission bill will be enacted, thus avoiding the necessity of further legislation of this character.

The price of gas is very high in Brooklyn, when compared with other large cities, and this fact has had great weight in influencing my decision on this bill. The people seem entitled to a reasonable reduction, and this bill is apparently the only relief available at the present time.

DAVID B. HILL.

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LETTER TO THE JAMESTOWN WATER SUPPLY  
COMPANY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 5, 1887. }

*To the Jamestown Water Supply Company, Jamestown, N. Y.:*

GENTLEMEN—The report and findings of the State Board of Health relative to the examination of the water supply of the city of Jamestown, submitted to me on the twenty-third day of February, 1887, in obedience to my requisition, dated the tenth of July, 1886, has been approved by me and filed in the office of the Secretary of State. Having been subsequently informed by the State Board of Health that measures tending to remedy the evils complained of and reported upon have been taken by you, the issuance of an order therein is suspended.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 428, TO EXTEND THE  
JURISDICTION OF FIRE COMMISSIONERS IN  
ROME.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 6, 1887. }

*To the Assembly :*

Assembly bill No. 428, entitled "An act to amend chapter five hundred and seventeen of the Laws of eighteen hundred and eighty-one, entitled 'An act to establish a board of fire commissioners for the city of Rome,'" is herewith returned without approval.

The object of this bill is to extend the jurisdiction of the board of fire commissioners of the city of Rome over the police department of that city also. Accordingly it empowers such board to appoint and remove all policemen in the city, to fix their compensation, and to make rules and regulations for the government of the police department generally. The title of the bill gives no indication of any such object, and is, therefore, repugnant to the spirit of section 16 of article III of the Constitution requiring the subject of every local bill to be expressed in its title.

Section two of this bill, by evident clerical error, amends section two of the amended act instead of section 11 thereof, as was undoubtedly intended, thereby creating confusion and uncertainty, if not more serious trouble.

Moreover, public sentiment seems to be greatly divided in the city of Rome as to the advisability of this measure. The common council, by a vote of twelve to two, have protested against it, and there is apparently much opposition to it among citizens generally.

So important a change in the municipal government as is contemplated by this act should not be hastily adopted, and should only be made where the people are substantially united in favor of it.

It seems to be preferable to delay the enactment of so important a measure until public sentiment shall be more manifestly in its favor, and its provisions can be thoroughly perfected.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 324, TO DEFINE THE  
BOUNDARIES OF MOHAWK CEMETERY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 9, 1887. }

*To the Assembly :*

Assembly bill No. 324, entitled "An act to define the boundaries of the Mohawk cemetery in the village of Mohawk, county of Herkimer, to establish a permanent board of trustees, and to define their powers and duties," is herewith returned without approval.

Nearly all the substantial provisions of this exceedingly prolix bill are already contained in subdivision 17 of section 17 of chapter 157 of the Laws of 1844, constituting the charter of the village of Mohawk, as amended by chapter 412 of the Laws of 1880.

Still other provisions of this bill are contained in the general statutes relating to cemeteries in villages. The bill makes no express reference to any of these previous statutes, but sweepingly repeals "all acts or parts of acts heretofore passed relative to said cemetery."

This bill should amend the subdivision of the village charter aforesaid, if any amendment thereto is desirable. The bill is excessively minute in describing and limiting the powers and duties of the cemetery trustees. So much detail would necessarily involve frequent applications to the Legislature for such modifications as the trustees themselves should be allowed to make.

The first section of the bill is wholly unnecessary. The only effect of the section is to declare the name by which the cemetery shall be known. The second section declares that the "village trustees are hereby constituted a permanent board of trustees;" that they shall hold the title to the said lands, except the lots or portions that now are or hereafter shall be conveyed.

It is not denied that there are some new and perhaps useful provisions in the bill, but they are so hidden away in a mass of needless minutiae that it seems wiser to allow the present more compact and clear statute relating to this cemetery to remain undisturbed.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 793, TO SELL PROPERTY IN BINGHAMTON FOR TAXES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 9, 1887. }

*To the Assembly:*

Assembly bill No. 793, entitled "An act to authorize the treasurer of Broome county to sell property in the city of Binghamton for unpaid taxes," is herewith returned without approval.

The object of this bill is to confer upon the treasurer of Broome county the authority to sell lands in the city of Binghamton for unpaid State and county taxes, which, by the general statutes, is conferred upon the Comptroller. Whatever may be thought of the policy of the numerous special acts conferring such authority upon the county treasurers of various counties in this State, it is certainly an unwise subdividing of special legislation to give a county treasurer such authority in a portion only of his county. Upon so important a subject, ultimately involving the title of a large portion of the lands of the State, a uniform system is very desirable. If such uniformity cannot be maintained throughout the State, it should certainly prevail over the entire territory of a county ordinarily situated.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 1014, CONSTITUTIONAL  
CONVENTION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 10, 1887. }

*To the Assembly:*

Assembly bill No. 1014, entitled "An act to provide for a convention to revise and amend the Constitution," is herewith returned without approval.

My objections are as follows:

*First.* The bill postpones the holding of the constitutional convention until next year.

The people having voted, last fall, by an overwhelming majority, in favor of a convention, it became the imperative duty of the present Legislature to provide for the holding of



such convention during this year. This course was not only required by the spirit of the Constitution, but was sanctioned by precedent and demanded by every consideration of propriety. The action of the Legislature in delaying the passage of this measure until the closing days of the session, and determining that the convention should not be held until another year, seems to be in direct defiance of the will of the people, and without precedent in the history of the State.

*Second.* The bill contemplates a partisan convention by making no provision for representation other than to the two principal political parties of the State. This was not what the people demanded or expected. It provides for only one delegate from each Assembly district, and for thirty-two delegates-at-large, in effect, to be equally divided between the two principal political parties. It makes no other provision for minority representation. It thereby virtually excludes from membership the representatives of the elements of organized labor and of prohibition, who should properly be afforded an opportunity of participating in the work of such a convention. My views upon the subject were expressed in my annual message, as follows.

"It is believed that, so far as is possible, the various interests in the State should be represented in the convention, which should include not only the adherents of the two principal political parties, but the prominent representatives of the prohibition, license, woman suffrage, labor reform and anti-monopoly sentiment, as well as those identified with any other special interest of importance desiring changes in the organic law of the State, thereby rendering it emphatically the people's convention as contemplated by the Constitution. For this purpose it is deemed advisable that as many delegates be elected from the State at large as may be practicable, and experience seems to show that this method will also be more likely to secure a better class of delegates than the district system."

It is to be regretted that these suggestions have been entirely disregarded or ignored in the framing of this measure.

*Third.* It provides for the election of delegates at the annual election next November, rather than at a special election.

This will inevitably cause the selection of delegates to be complicated with partisan considerations, and will be less likely to ensure a representative body possessing the full and entire confidence of the people. A constitutional convention is not the proper field for securing mere party advantage. The people do not desire a strict partisan convention, nor will they countenance any effort to engraft upon the Constitution the mere political dogmas of any partisan organization. The ablest, best and purest men in the State should be selected for the work of such a convention, regardless of political considerations or party predilections.

Such a result, however, is impossible under the provisions of this bill, where the election of delegates would be necessarily complicated with an annual State and local election.

Instead of the selection of the best qualified representatives, and those possessing the highest character and ability, the practical effect of this provision of the bill would be the exclusion of such men, and the choosing of those of mediocre ability. For it would almost inevitably come about that the weaker candidate before the Assembly convention, who could not secure the nomination for member of Assembly, would be propitiated by a nomination for "Assembly Delegate" for the constitutional convention. By this action the friends of both candidates would be satisfied, and, while such a combination oftentimes would be strong, politically speaking, the effect would be to bring together a convention composed not of the strongest but of second-rate men from the respective Assembly districts.

Such considerations as I have mentioned have not been without weight with other Legislatures, and the selection of

delegates for all the preceding constitutional conventions held in this State was made at special elections held apart from the general elections. This was so for the conventions of 1806, of 1821, of 1846, and of 1867.

The only argument or excuse which has been advanced for this unprecedented action on the part of the present Legislature is that by the postponement of the election to November the expense of a special election would be avoided. That expense is nothing when compared with the importance of the subject. But even if it were, this bill, by its very terms, refutes that argument of economy. By section eleven an appropriation of \$320,000 is made to pay the expenses of the convention of 1888. The act for the Convention of 1867 made an appropriation of only \$250,000. Exactly where the argument of economy can be advanced, side by side with an increase of appropriation of \$70,000, I am unable to perceive.

This bill also directs that the convention shall meet in the Assembly Chamber in the Capitol, in January, 1888, a time at which the Legislature will, in the ordinary course of events, also be in session. True, it allows an adjournment to such place within the State as the convention may decide upon, and authorizes the rental of a proper place in which the convention shall hold its sittings, but there is no hall in the State suitably located which can be obtained without large expense. Possibly the increased appropriation of \$70,000 is intended to meet this unnecessary increase in expense. With fine and suitable rooms in the Capitol, which has already cost many millions of dollars, standing unused during seven months in the year, I am sure that the people of the State would not look with favor upon the expenditure of \$70,000, or any considerable part thereof, in securing accommodation for a convention which might more properly meet during months when the Legislature is not in session.

*Fourth.* It provides for, or permits the submission to the people of the proposed amended Constitution at the general election of 1888. At that election a President of the United States is to be chosen. All other questions become minor and are inevitably lost sight of in a campaign conducted upon national issues. The greater must overshadow the less, and a calm, dispassionate discussion of amendments to the organic law of the State, even though they were, in reality, of the utmost concern to its future welfare, would be impossible. At least this has been the experience of the past, and our political activities have not so changed as to lead to the belief that the future would show a different result. The probabilities are that whether the work of the convention were accepted or rejected by the people at such election, the sober second thought of calmer political years succeeding would condemn the unthoughtful conclusion, so far as constitutional questions were concerned, of the year 1888.

*Fifth.* The basis of representation proposed for the convention is grossly partisan and unjust. Fair-minded men will concede that such a convention ought to represent the majority of the people of the State. It at least should not represent the minority of the people to the exclusion of the majority. Yet the practical effect of this measure is to accomplish just the latter result.

The delegates (other than the few delegates-at-large) are to be chosen by Assembly districts, established under an apportionment made in 1879, which was based upon an enumeration made twelve years ago. No one pretends that that apportionment is fair or just at the present time. Its glaring inequalities cannot be justified nor excused. It is maintained only by the persistent refusal of the Legislature to provide for a new enumeration and a reapportionment in accordance with the express commands of the Constitution.

Under the present inequitable apportionment of Assembly districts, St. Lawrence county, with only 86,000 population, would have three delegates in the convention; while Orange county, with over 88,000 population, and Queens county, with over 90,000 population, would only be entitled to two delegates each. Other counties exhibit similar instances of unfairness. The Assembly districts in the great counties of Kings and New York show an average of about 20,000 population more than the average of an equal number of districts in the interior of the State. Yet this measure provides for the election of delegates in accordance with this partial and inequitable basis of representation.

The latest apportionment of the State was made in 1883, based upon the Federal census of 1880, and its fairness has never been questioned. There was no difficulty in providing for the election of delegates from Congressional districts. A certain number could be chosen from each district and a provision could easily be made for proper minority representation.

This subject was early brought to the attention of the Legislature in January last, in my annual message, wherein it was stated as follows:

“It is assumed that in a matter of such vast consequence and importance as the revision of the Constitution, there will be no endeavor to obtain any supposed political or partisan advantage by a refusal to permit the people of the State to be fairly and equitably represented in their own constitutional convention according to the last enumeration and apportionment of its inhabitants.”

The delegates to the constitutional convention of 1867 were not selected by Assembly districts, and although they were so chosen for the earlier conventions, yet fair and equitable apportionments of Assembly districts had immediately preceded the holding of such conventions, while now there has not been an Assembly apportionment in twelve years.

There are many minor defects in the bill, but these it is not deemed necessary to discuss. The objections stated are sufficient, I believe, to lead substantially all the people of the State to the same conclusion at which the more reputable portion of the press of the State has already arrived, namely, that the bill was urged as a partisan measure, that its passage was secured only under caucus pressure, and that its essential provisions are in open disregard of the general interests of the State.

The alternative is presented to the Executive either to allow this imperfect and unsatisfactory bill to become a law, or, by the imposition of a veto, to assume the risk that no other act for a convention will be passed by this Legislature. My duty to the State excludes the former alternative, and, as to the latter, I am of the belief that there is yet ample time for the Legislature to prepare a proper bill. If no such disposition effectively manifests itself, another Legislature, with a higher sense of its responsibility to the State, can perform the neglected duty.

In order to afford this Legislature every opportunity for further deliberate action in this important matter, I have put aside the multitude of bills previously received, and awaiting my action, and have carefully considered this one. It is promptly returned for such further consideration as its importance demands.

The conclusion at which I have arrived I believe fairly represents the general sentiment of the State. The newspaper press, that usually so faithfully announces public opinion, does not advocate this measure in its present shape; the people do not want it, and, in fact, hardly any one outside of the Legislature and not blinded by party zeal has ever even assumed to believe that it could receive Executive approval.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 319, TO AMEND THE  
CHARTER OF THE CITY OF TROY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 11, 1887. }

*To the Assembly:*

Assembly bill No. 319, entitled "An act to amend section sixteen of title four of chapter five hundred and ninety-eight of the Laws of eighteen hundred and seventy, relative to the city of Troy, as amended by chapter two hundred and forty-eight of the Laws of eighteen hundred and eighty-two, and as further amended by chapter three hundred and thirty of the Laws of eighteen hundred and eighty-four, as further amended by chapter four hundred and two of the Laws of eighteen hundred and eighty-five, and the several acts supplemental thereto and amendatory thereof," is herewith returned without approval.

The section of the Troy city charter proposed to be amended by this bill, as enacted in 1870, provided, among other things, that the entire expense of constructing sewers in said city should be apportioned and charged upon the property and persons benefited thereby.

In 1882, by chapter 248 of the Laws of that year, this section of the city charter was amended by providing that one-half only of the expense of constructing sewers in certain specified streets should be paid by the adjoining property-owners, and that the remaining one-half should be paid by the city at large.

In 1884, by chapter 330 of the Laws of that year, this section of the city charter was again amended by striking out a portion of the streets so excepted from the general provisions of the section and adding certain others.

In 1885, by chapter 71 of the Laws of that year, similar changes were made. Again, in the same year, by chapter 402 of the Laws of that year, still other streets were added to those excepted from the general provisions of the section.

It appears from this bill, that on June 4th, 1886, the common council of the city of Troy ordered the construction of a sewer under the general provisions of the city charter, by which the entire expense of constructing such sewer should be paid by the adjoining property-owners. It also appears from this bill, that such sewer has been either partially or wholly completed, and that some of the adjoining property-owners have already paid their entire assessments. This bill now proposes to transfer from such adjoining property-owners to the city at large the payment of one-half of such assessments, by adding the streets through which the last-mentioned sewer runs to the number heretofore excepted from the general provisions of this section of the city charter.

It is understood that three similar bills relating to other streets in said city are now pending in the Legislature. It is evidently time that these frequent applications to the Legislature should cease. If peculiar local circumstances justify charging the property-owners along certain streets with only one-half the expense of constructing sewers therein, instead of with the entire expense thereof as in other portions of the city, the common council must, by force of their situation, be better judges of such circumstances than the Legislature. If such exceptions are to be allowed in any case, this section of the city charter should be amended by giving the common council the power to decide whether the circumstances justify the relief asked for.

The local authorities appear to be opposed to this bill. It certainly seems unjust that property-owners who have paid the entire expense of sewers in front of their own premises should be compelled to contribute toward paying one-half of



the expense of sewers in other streets also. But without passing upon the justice of relieving the adjoining property-owners from payment of one-half of the expense of constructing this particular sewer, it is insisted that the city charter must either be adhered to as it now stands, or else so amended as to allow strictly local affairs to be regulated by the local authorities, and so as to furnish no occasion for applying to the Legislature for the passage of local bills of this nature.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 424, TO INCORPORATE  
THE VETERAN ASSOCIATION OF THE SEVENTY-  
FIRST REGIMENT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 16, 1887. }

*To the Assembly:*

Assembly bill No. 424, entitled "An act to incorporate the Veteran Association of the Seventy-first Regiment, National Guard of the State of New York," is herewith returned without approval.

The second section of this bill reads as follows:

"SECTION 2. The objects of said corporation are to promote social union and fellowship, and preserve and continue the recollection of the service of the Seventy-first Regiment."

My predecessor, in disapproving a similar bill, remarked: "The association of the veterans for social and benevolent objects, and to foster and keep alive their interest in the organization, is a laudable and pleasant thing to do, and this can be fully accomplished under existing statutes."

There already exist two general statutes for the incorporation of societies or clubs for social, recreative and benevolent

purposes (chapter 368 of the Laws of 1865, and chapter 267 of the Laws of 1875), under either of which this association might be incorporated for the purposes set forth in the second section of this bill.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 777, SCHOOL DISTRICTS  
IN STEUBEN COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 16, 1887. }

*To the Assembly:*

Assembly bill No. 777, entitled "An act relating to the school commissioner districts in and for the county of Steuben, and to increase the number of school commissioner districts in said county," is herewith returned without approval.

The object of this bill is to establish a third school commissioner district in the county of Steuben. Chapter 482 of the Laws of 1875, as amended by chapter 543 of the Laws of 1881, authorizes the boards of supervisors of the several counties of the State "to divide any school commissioner district which contains more than two hundred school districts, and to erect therefrom an additional school commissioner district." If either of the present school commissioner districts of Steuben county now contain over two hundred school districts, the board of supervisors of that county have legislative jurisdiction over the subject-matter of this bill. If the limit of two hundred school districts as fixed by the general law is too high, such limit should be reduced by amendment to the general law.

This is the second bill of this nature which has passed the present Legislature.

As each school commissioner receives an annual salary of \$1,000, payable out of the free school fund of the State (Laws of 1885, chapter 340, section 5), a temptation naturally exists to increase local officers without increasing local taxation.

A proposal to amend the general law is the only fair test of the principle of this bill.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 837, TO AMEND THE  
CONSOLIDATION ACT OF NEW YORK CITY, RE-  
LATING TO THE DEPARTMENT OF DOCKS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 16, 1887. }

*To the Assembly:*

Assembly bill No. 837, entitled "An act to amend section seven hundred and sixteen of chapter four hundred and ten of the Laws of eighteen hundred and eighty-two, entitled 'An act to consolidate into one act and to declare the special and local acts affecting public interests in the city of New York in relation to the dock department,'" is herewith returned without approval.

This bill amends said section 716 by adding certain restrictive provisions at the end of the section as passed in 1882. By the amendments of 1884 (chapter 517), important provisions were added at the end of the original section which are by manifest error omitted from this bill. These omissions and some minor clerical errors and other defects are alone of sufficient importance to necessitate Executive disapproval of the bill, especially in view of the assurance of the dock department that the difficulties sought to be obviated by this meas-

ure can and will be satisfactorily adjusted in a practical manner without necessitating any legislation for that purpose. The bill is opposed by the dock department and other local authorities of New York city.

DAVID B. HILL.

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VETO, SENATE BILL, NOT PRINTED, RELATING  
TO THE UNITED STATES LOAN COMMISSIONER  
FOR ONTARIO COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 16, 1887. }

*To the Senate :*

Senate bill, not printed, entitled "An act in relation to the commissioners for loaning certain moneys of the United States in the county of Ontario," is herewith returned without approval.

This bill provides for the turning over into the hands of the loan commissioner of the county of Ontario, certain moneys known as the United States deposit fund, which had previously been covered into the State treasury by such commissioners, within certain dates specified therein.

The policy inaugurated by this bill is opposed by the Comptroller of the State, who asserts that the financial interests of the State will be better subserved by allowing these moneys to be invested by the Comptroller and their control retained by him.

A portion of the moneys mentioned in this bill has already been invested, and complications are likely to arise in the enforcement of the act.

This general fund has been greatly depreciated in the past by the negligence and misconduct of loan commissioners, and

it seems to be a wise policy to gradually cause the same to be covered into the State treasury.

I cannot, therefore, approve this special act establishing a different policy for the county of Ontario than that which the Comptroller insists should be gradually applied to the whole State.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 668, TO AMEND THE  
CODE OF CIVIL PROCEDURE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly :*

Assembly bill No. 668, entitled "An act to amend section three thousand and sixty-three of the Code of Civil Procedure," is herewith returned without approval.

Frequent changes in the Code should be avoided as much as possible. The propriety of the proposed amendment is not so clearly apparent as to warrant a radical change in the practice on appeals to County Courts which has existed for many years, and which seems to have given reasonable satisfaction.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 1126, ESCHEAT OF LANDS  
IN SULLIVAN COUNTY TO MARY BEATTIE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,                    }  
ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill No. 1126, entitled "An act to release to Mary Beattie the right, title and interest of the people of the State of New York in and to certain real estate in the town of Tusten, Sullivan county," is herewith returned without approval.

This bill has the appearance of an ordinary escheat bill, and I assume that the Legislature very naturally misapprehended its real character. The Comptroller informs me that the lands proposed to be given away by this measure were purchased by the State upon a mortgage foreclosure in 1829, and actually cost the State \$373.12, without including interest.

The bill is manifestly an improper disposition of the property of the State, besides being clearly unconstitutional.

DAVID B. HILL.

VETO, SENATE BILL No. 333, TO PROVIDE FOR  
MAKING THE OFFICE OF DISTRICT ATTORNEY  
A SALARIED OFFICE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,                    }  
ALBANY, May 18, 1887. }

*To the Senate:*

Senate bill No. 333, entitled "An act to amend chapter three hundred and four of the Laws of eighteen hundred and

fifty-two, entitled 'An act to authorize the board of supervisors of the several counties of this State to make the office of district attorney a salaried office, and to fix the salary thereof,' is herewith returned without approval.

This act proposes to amend a statute of the State relating to district attorneys, which has been in existence since 1852, by providing that district attorneys, in addition to their salaries, may retain for their own use any taxable costs which they may recover. The act of 1852 required district attorneys to account for such costs to the county.

There has been no complaint of any injustice having been done under the original act. It does not seem necessary that any additional inducements should be held out to district attorneys to secure the prompt and efficient discharge of their duties, including the bringing of suits for forfeited recognizances. They should be paid a liberal salary, which ought not to be extravagant in any respect. It is unwise to make it for their personal and pecuniary interest to make a specialty of the suing of forfeited recognizances. Such forfeitures are technical many times, and need not be unnecessarily encouraged. The duties of district attorneys should be discharged irrespective of such considerations. The law, as it has existed since 1852, has worked well enough, and there is, at present, no particular necessity of changing it.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
915, TO REGULATE FISHING OFF CAPE VIN-  
CENT, LAKE ONTARIO.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*Memorandum filed with Assembly bill No. 915, entitled "An act to prevent taking fish from the waters of Lake Ontario adjacent to the shore of Cape Vincent by other means than angling," which, not having been returned to the house in which it originated within ten days, became a law pursuant to article IV, section 9, of the Constitution.*

So far as I understand the object of this bill, it does not meet my entire approval. It seems to unduly sacrifice the interests of business fishermen for the sake of preserving game fish for sportsmen. But for over a year past I have made it a rule to refrain from interfering with the many local game and fish bills passed by the Legislature, because of the utter impossibility, owing to my other official engagements, of fully comprehending the circumstances of the locality to which they apply.

While I cannot express my approval of this bill by signing it, I am reluctantly compelled, for the reasons aforesaid, and by my necessarily imperfect knowledge of the local situation, to adhere to my former policy, and I, therefore, allow this bill to become a law without my signature.

In such matters as local game and fish laws the Executive must rely upon the representatives in the Legislature from the locality directly interested, to correctly express the wishes of their constituents, and upon the Member and Senator from the district affected must mainly rest the responsibility for legislation of this character.

DAVID B. HILL.



VETO, ASSEMBLY BILL No. 369, TO GIVE JURISDICTION TO THE BOARD OF CLAIMS IN THE MATTER OF THE CLAIM OF JAMES W. DUDLEY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill No. 369, entitled "An act to give jurisdiction to the Board of Claims to hear, audit and determine the claims of James M. Dudley against the State, and to ratify his retainer by the Comptroller to bring and conduct certain cases," is herewith returned without approval.

This is a private bill, and it may seriously be questioned whether it is not in violation of section 16 of article III of the Constitution, in that it embraces two subjects. It confers jurisdiction upon the Board of Claims to hear the claims of the beneficiary, besides ratifying his alleged retainer, which second subject is not expressed in the title. Passing this consideration, the bill is objectionable because it is unnecessary. The claimant was retained, as it would appear from the bill, by the State Comptroller, to conduct three cases brought against the State which threatened its title to certain lands. Assuming the facts to be as disclosed by the bill, the Comptroller has power to audit and pay the claims. There is a regular appropriation in the Supply bill, from which expenses, incurred by that official in protecting the State's title to lands, may be paid by him.

The bill is, therefore, not only special legislation in the strictest sense, but it is entirely superfluous.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 1077, TO AMEND THE  
LAW RELATING TO NORMAL SCHOOLS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill No. 1077, entitled "An act to amend section three of chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six, entitled 'An act in regard to normal schools,'" is herewith returned without approval.

The principal amendment proposed by this bill consists in permitting one of the local managers of the normal schools, who may be designated as secretary of the board, to receive an annual salary.

There seems to be no absolute necessity for this change, and its propriety is very doubtful. The policy of allowing local officers of State institutions (which positions are mainly honorary and much sought after) to receive pay for their services to the State, furnishes a bad precedent.

It is not deemed wise to inaugurate such a precedent at this time.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 996, TO AMEND THE  
CHARTER OF GLOVERSVILLE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill No. 996, entitled "An act to amend chapter five hundred and five of the Laws of eighteen hundred and

seventy-three, entitled 'An act to reorganize the village of Gloversville,' is herewith returned without approval.

This bill provides that "any member of the fire department of said village shall be holden to duty therein for the term of five years from his enlistment, unless disability shall incapacitate him from such service, or he shall be sooner discharged by the trustees." No provision is made as to how the fireman shall be "holden to duty," whether by penalty, fine or imprisonment.

It is not usually necessary to enforce the organization of fire companies by such severe means as might be adopted under the novel provision of this bill.

Unusual exemptions in favor of firemen are also granted by this bill. It cannot be necessary for the organization of an efficient fire department in Gloversville, to adopt such extreme measures as are proposed by this bill.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 148, RELATING TO  
QUALIFICATIONS OF VILLAGE VOTERS ON THE  
SUBJECT OF WATER TAXES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill No. 148, entitled "An act to amend chapter one hundred and eighty-one of the Laws of eighteen hundred and seventy-five, entitled 'An act to authorize the villages of the State of New York to furnish pure and wholesome water to the inhabitants thereof,'" is herewith returned without approval.

This bill proposes to change the qualifications of voters at special elections in villages for determining whether water taxes shall be imposed. The present law requires that voters at such elections shall be "tax payers whose names appear upon the last assessment-roll of the village." This bill proposes to substitute therefor, "liable to be assessed for such tax in his own right or in the right of his wife." The present law is clear and easily ascertainable. The proposed change would lead to uncertainty and confusion. The question of the right to vote under the proposed change would often be incapable of exact determination. The right to vote should always be as far as possible removed from all doubts and uncertainties.

DAVID B. HILL.

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VETO, ASSEMBLY BILL, NOT PRINTED, TO AMEND  
THE VILLAGE CHARTER OF SAVANNAH,  
WAYNE COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill, not printed, entitled "An act to amend chapter three hundred and eighty-eight of the Laws of eighteen hundred and sixty-seven, entitled 'An act to incorporate the village of Savannah, county of Wayne, State of New York,'" is herewith returned without approval.

This bill proposes amendments to the village charter of Savannah, authorizing the board of trustees to raise money by tax for the purchase of a site for an engine-house, for the erection thereof, for the purchase and repair of fire apparatus, and to organize fire companies.

All these powers are already conferred upon the trustees of this village by existing statutes.

Chapter 308 of the Laws of 1884 provides that "The trustees and officers of any village of this State created by special charter shall have and possess the same powers as are prescribed in any general act for the incorporation of villages within this State, except as such special charter may be in conflict with any provision of said general acts." The general act for the incorporation of villages (Laws of 1870, chapter 291, title III, section 3, subdivisions 11 and 12 and section 5) fully confers upon the trustees of the villages incorporated thereafter all the powers specified in this bill, and by virtue of the act of 1884, the same powers are conferred upon the trustees of the village of Savannah. This bill is, therefore, wholly unnecessary.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 1033, FOR THE IMPROVEMENT OF THE DELAWARE RIVER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly:*

Assembly bill No. 1033, entitled "An act for the improvement of the Delaware river, and the protection of the territory and boundaries of the State," is herewith returned without approval.

This bill appropriates fifteen thousand dollars "for the purpose of improving the navigation of the Delaware river, and the rafting channel thereof, and protecting the lives and property of citizens of this State."

This bill is open to the following objections:

*First.* The title expresses more than one subject.

*Second.* The bill is mandatory.

*Third.* The measure is the outcome of a popular delusion that whenever a stream is declared a public highway, the State thereby becomes liable to improve its channel and banks for the benefit of navigators and riparian owners. No such liability or obligation exists.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 570, TO AMEND THE  
CHARTER OF ROME.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 18, 1887. }

*To the Assembly :*

Assembly bill No. 570, entitled "An act to amend chapter twenty-five of the Laws of eighteen hundred and seventy, entitled 'An act to incorporate the city of Rome,'" is herewith returned without approval.

The boundaries of the town and city of Rome are now co-terminous. This bill proposes that a portion of the present city and town, known as the "corporation tax district," shall be a city and town known as the city of Rome and town of Rome, and again declares that the inhabitants within such district shall be a corporation by the name of the city of Rome. Thus two inconsistent names are given to the new city territory, and no name left for the balance.

It is understood that this bill was intended to be supplemented with another one, which would remedy part of this inconsistency, but which has not passed the Legislature.

DAVID B. HILL.

## VETO, SENATE BILL No. 133, TO ENFORCE COLLECTION OF TAXES IN MADISON COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 21, 1887. }

*To the Senate :*

Senate bill No. 133, entitled "An act to enforce collection of taxes levied in the county of Madison," is herewith returned without approval.

The object of this bill is to transfer from the Comptroller to the treasurer of Madison county the powers to sell lands therein for unpaid State and county taxes. More than fifty special acts have been passed, at various times, in this State relating to similar powers to the county treasurers of more than twenty counties. If it is desirable to change the general policy of the State in this respect, a uniform law should be adopted for all the counties excepted from the Comptroller's jurisdiction. In a matter of so much importance as the title to lands sold for taxes, an examination of a different set of statutes for each separate county should not be made necessary.

A great need of the State is uniform general laws on all general subjects, instead of varying special laws, however meritorious each by itself may be.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 631, RELATING TO FEES  
OF COUNTY TREASURERS AND THE COMP-  
TROLLER OF NEW YORK CITY AND COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 21, 1887. }

*To the Assembly:*

Assembly bill No. 631, entitled "An act relating to the payment of fees to county treasurers and the comptroller of the county of New York, who may have been elected or appointed prior to the passage of chapter four hundred and eighty-three of the Laws of eighteen hundred and eighty-five, entitled 'An act to tax gifts, legacies and collateral inheritances in certain cases,'" is herewith returned without approval.

It is the usual policy of the State not to increase the fees and allowances of public officials during the term for which they have been elected, even though the Legislature imposes additional duties upon them. That course follows the spirit of the Constitution, and the law of 1885—proposed now to be amended—was framed in accordance therewith, and there seems to be no good reason for changing it.

The Comptroller of the State, who is its chief financial officer, objects to this bill upon the ground that there is no sufficient reason for allowing such fees to officers elected either before or after 1885, and I am informed that a bill to abolish these fees altogether is now before the Legislature, and, therefore, there seems to be no propriety in approving this bill at the present time.

DAVID B. HILL.



VETO, ASSEMBLY BILL No. 692, TO PROVIDE FOR A  
SEWER IN THE VILLAGE OF WATERLOO.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 21, 1887. }

*To the Assembly:*

Assembly bill No. 692, entitled "An act to provide for constructing a sewer under the Cayuga and Seneca canal in the village of Waterloo, county of Seneca, and to make an appropriation therefor," is herewith returned without approval.

While this bill merely authorizes the Superintendent of Public Works to perform the proposed work, it nevertheless prescribes the particular method of performance. The State Engineer and Surveyor is of the opinion that a different method will be more effective and economical, and that the work should not be performed in the manner required by this bill.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 1019, RELATING TO  
THE STATE DITCH IN THE TOWN OF MENTZ,  
CAYUGA COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 21, 1887. }

*To the Assembly:*

Assembly bill No. 1019, entitled "An act in relation to the State ditch in the town of Mentz, in Cayuga county," is herewith returned without approval.

I am advised by the State Engineer and Surveyor and the Superintendent of Public Works that the injuries sought to be

remedied by this bill are due to the condition of a natural water-course with which the State has never interfered, and with which it appears the State has nothing whatever to do.

DAVID B. HILL.

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MEMORANDUM FILED WITH SENATE BILL No. 105,  
AMENDING THE CONSOLIDATION ACT FOR  
THE CITY OF NEW YORK RELATING TO THE  
COMPTROLLER AND FIRE INSURANCE. AP-  
PROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 23, 1887. }

*Memorandum filed with Senate bill No. 105, entitled "An act to amend chapter four hundred and ten of the Laws of eighteen hundred and eighty-two, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York,' by extending the period during which the corporation therein named may collect and apply to its use the percentage or tax on the receipts of the foreign fire insurance companies doing business in the city of New York." Approved.*

From such examination as I have been able to give to this bill during the limited time at my disposal, I have concluded to approve it. There are hundreds of other measures awaiting my attention at this late stage of the session, and my consideration of this bill has necessarily been hasty and somewhat imperfect.

While approving the measure because I believed its general features have much merit, yet it is not improbable that a better-regulated and more permanent measure, and possibly one

more equitably adjusted toward all whose interests are affected by it, might be framed, and if any such measure shall hereafter be presented, then the approval of this will not be deemed sufficient to prevent a reconsideration of the whole subject.

DAVID B. HILL.

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VETO, SENATE BILL NO. 117, TO ESTABLISH A  
FERRY ACROSS LAKE CHAMPLAIN FROM BAR-  
BER'S POINT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 23, 1887. }

*To the Senate :*

Senate bill No. 117, entitled "An act establishing a ferry from Barber's Point in the town of Westport, in the county of Essex, across Lake Champlain," is herewith returned without approval.

This bill declares that it shall be lawful for Loyal W. Spaulding, his heirs or assigns, to keep and maintain the ferry described in the title, and prohibits any other person from keeping or maintaining a ferry within one mile north or south therefrom.

The only thing to prevent this being legally done is the Constitution of the State. The second veto of Governor Tilden was in disapproval of a similar bill, in which he says: "It seems to me plain that this bill is in conflict with the provisions of section 18 of article III of the Constitution, which prohibits the Legislature from passing any private or local bill granting to any private corporation, association or individual any exclusive privilege, immunity or franchise."

The Court of Appeals has repeatedly confirmed the doctrine of Governor Tilden in this respect. In the Matter of Union Ferry Co., 98 N. Y., at p. 151, the court, per Rapallo, J., says: "The most familiar instances of grants of exclusive privileges or franchises are to be found in acts authorizing the establishment of ferries, toll bridges, turnpikes, telegraph companies and the like, as in case of the Cayuga Bridge Company, which provided that it should not be lawful to erect any bridge or establish any ferry within three miles of the place where the bridge of the company should be erected, or to cross the river within three miles of the bridge without paying toll (citing cases). The charter of the Mohawk Bridge Company, which prohibited ferries across the river one mile above and one mile below the bridge (citing cases)."

This doctrine was again recognized by the Court of Appeals in *Power vs. Village of Athens*, 99 N. Y. 592.

A bill so clearly unconstitutional ought not to be approved.

DAVID B. HILL.

VETO, ASSEMBLY BILL NO. 1162, TO INCORPORATE  
THE PROVIDENT INDUSTRIAL INSURANCE  
COMPANY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 23, 1887. }

*To the Assembly:*

Assembly bill No. 1162, entitled "An act to incorporate the Provident Industrial Insurance Company," is herewith returned without approval.

This bill is objectionable for the reason that it provides for the incorporation of a joint-stock life insurance company by

special act, while there is already on the statute books a general act, chapter 463 of the Laws of 1853 and the amendment thereof, providing for the incorporation of joint-stock companies for the transaction of the same kind of business.

The bill provides for the incorporation of this particular company with a capital of twenty-five thousand dollars, which is only one-fourth of the minimum amount of capital required for the incorporation of a joint-stock life insurance company under the general act.

It is urged in behalf of the bill, inasmuch as it contemplates the class of insurance business known as "industrial insurance"—policies for comparatively small amounts (in this particular case limited to not exceeding five hundred dollars in any one policy), on premiums of a few cents collected weekly or at other short intervals, that this furnishes a reason why this class of companies should be allowed to incorporate on a smaller capital than ordinary life insurance companies.

On the other hand, the actuary of the Insurance Department, on inquiry, expresses the opinion that the minimum one hundred thousand dollars named in the general act is as small a capital as any joint-stock life insurance company can be organized upon in this State, compatible with safety to the insured and successful business by the company; that industrial life insurance companies now doing business in this State under the general act, as a matter of business, do in fact limit their policies to amounts ranging generally from one hundred and five hundred dollars; that the policies of the largest company of this class in America, having over a million policy-holders, average only about one hundred and four dollars each in amount; that the ratio of expense to income in this class of companies for the first few years of their existence is much greater than is the case with ordinary life insurance companies, and, therefore, that there is more occasion for increasing the minimum of capital stock with which to launch this class of

companies than to decrease it below the amount named in the general act.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 888, TO AMEND THE  
REGISTRY LAW.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 24, 1887. }

*To the Assembly:*

Assembly bill No. 888, entitled "An act to amend chapter five hundred and seventy-six of the Laws of eighteen hundred and eighty, entitled 'An act to ascertain by proper proofs the citizens who shall be entitled to the right of suffrage in cities of sixteen thousand inhabitants or upwards, and in towns and villages abutting against the boundary of any such cities,' and to amend chapter five hundred and eight of the Laws of eighteen hundred and eighty-three amendatory thereof," is herewith returned without approval.

This bill proceeds upon the theory that the majority of voters are dishonest. For the sake of possibly preventing a few dishonest men from voting, this bill would so add to the inconvenience and to the expense of registering, as to practically disfranchise many honest voters.

By the law as it now stands, the boards of registry are trusted to take the poll-list of the previous election in their district as the basis of their work, and from personal knowledge of their neighborhood changes, and from such information as they may deem reliable, to complete a preliminary list of all persons entitled to vote in their election district. This list they are required to post conspicuously for three weeks before each general election. By this method the local com-

mittees and all others interested are able to scan the list, and to bring such errors as they may discover to the notice of the board at their second meeting on the Friday before election. At this second meeting the board are authorized to correct all errors discovered in their former list, except that they can only add new names upon the personal appearance of the parties whose names had been omitted.

But the advocates of this bill place no more confidence in the officers than in the voters. By this bill the board of registry are not allowed, at any time, to place the name of a single person upon the registry list from their personal knowledge, no matter how long they may have known such person as a resident and voter in their district. Before every general election the board would be compelled by this bill to begin their registry anew, with an absolutely blank sheet. No previous voting list, no acquaintance with their neighbors, will allow them to enter a single name thereon. Their first meeting is still to be held three weeks before the election, and no one who may be too ill to attend in person, or who may be absent from his home on two particular Tuesdays and one Wednesday within that three weeks, or who may, through negligence or forgetfulness, omit to appear on one of those days, will be allowed to go upon the list or to vote at the following election. Under modern business methods, many men are continuously away from their homes for more than three weeks at a time, and are able only at much expense and inconvenience to return for the particular day of election. Under the present law, the members of the board of registry can be safely trusted to have personal knowledge of the great majority of such instances, and, upon their own motion, to enter such names upon their list. Under the proposed law this could not be done. This bill adds no substantial safeguards against fraudulent voting; it does add seriously to the difficulties and inconveniences of honest voting.

While this bill requires three meetings of the board within the three weeks before election, instead of two as at present, the last meeting for final revision is changed from the Friday to the Wednesday before election. At first the last meeting was on Saturday, the present law amended it back to Friday, and this bill takes it still farther back. This merely increases the injustice and hardship of the bill without serving any good purpose whatsoever. Such a change merely tends to keep voters generally off from the registry list, as though the object were chiefly to reduce the list by catching out as many sleepy voters as possible.

The present statute has been substantially in force for fifteen years. Its errors have been detected by experience and corrected by various amendments. Upon the whole it has worked satisfactorily. No law can absolutely prevent fraudulent voting without preventing all voting. This bill has gone too far in the latter direction. The chief dangers at present to the integrity of the ballot are, for that matter, of a different nature from those sought to be remedied by this bill.

I have called attention only to the main features of the changes proposed by this bill, without speaking of its incidental defects and inconsistencies, and accidental errors. I will mention only one of the latter. The copy of the preliminary list to be prepared at the first meeting of the board, which by the present law is to be posted in the *room* where the board holds its meetings, is by this bill to be posted in the *town* where the board meets. Other copies of the preliminary list are to be filed only in "the office of the town clerk of the town, and in the office of the village clerk of the village in which such election district may be." Under the statute as amended by this bill no provision whatever would remain for either posting or filing any list in cities, or in any way rendering the list accessible to any person outside of the members of the board until the list should be finally completed and no further corrections be possible.



This bill is professedly framed in the interest of more honest elections. I am aware that to express disapproval of its methods renders one liable to the false charge of disproving its intentions. But I do not believe the practical workings of this bill would be in the interest of more honest elections. I believe it would disfranchise more honest voters than fraudulent ones. The accidental error I have mentioned would alone necessitate my disapproval of the bill. But I prefer to place my disapproval upon the main features of the bill, which would certainly defeat rather than promote the objects of its framers and advocates.

The object of registration laws is to assist in determining who are entitled to vote, and to facilitate honest voting as well as to obstruct fraudulent voting. The path to the ballot-box should be made as free as possible to every honest voter, and should be hedged about with such obstructions only as shall tend to sift out and exclude illegal voters, and not merely tend to reduce the registry list without any sifting process.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 769—ITEMS IN THE  
SUPPLY BILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 25, 1887. }

*Statement of items of appropriation objected to and not approved, contained in Assembly bill No. 769, entitled "An act making appropriations for certain expenses of government, and supplying deficiencies in former appropriations."*

The several items herein enumerated, contained in Assembly bill No. 769, entitled "An act making appropriations for cer-

tain expenses of government, and supplying deficiencies in former appropriations," are objected to and not approved for the reasons hereinafter stated.

"For the Comptroller, for compensation of persons reporting an evasion of chapter five hundred and forty-two of the Laws of eighteen hundred and eighty, and the acts amendatory thereof, by any association, corporation or joint-stock company liable to taxation thereunder, and for assisting in the collection and preparation of evidence, and in the prosecution and trial of suits for such taxes as authorized by chapter two hundred and sixty-six of the Laws of eighteen hundred and eighty-six, and for postage and other necessary expenses incurred under said acts, the sum of ten thousand dollars, or so much thereof as may be necessary."

This item is objected to and not approved.

This item is based upon an act passed last year, which I did not sign, but allowed to become a law without my approval. The approval of this appropriation would substantially inaugurate a State system of informer's fees, which I am satisfied would not be for the public good. A like system practiced at one time by the general government fell into disrepute, and after a time was universally condemned, and in the end abandoned. The State of New York has a sufficient number of well-paid officials to make such action as that contemplated by this item undesirable.

"For deficiency in appropriations for expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-five, and eighteen hundred and eighty-six, and for paying the expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-seven, the sum of thirty-five thousand dollars, to be paid, in the case of legislative committees, on the certificate of the chairman of the respective committees and of the presiding officers of the respective houses, and in other cases, on the certificate of the presiding officers and clerks of the respective houses, and in all cases upon the audit of the Comptroller."

This item is objected to and not approved.

It is utterly impossible to tell what is the amount of deficiency for 1885, or for 1886, or how much is to be spent for 1887. "Expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony, and other contingent expenses of the Legislature" are brought together in one convenient paragraph, covering thus a multitude of items and three years of time. If not in letter, certainly in spirit, this violates that section of the Constitution which requires that an appropriation act shall distinctly specify the object to which the appropriation is to be applied.

It is presumed that the chief application is to be for counsel fees and expenses of legislative investigating committees. Contrary to the law which prevails in the administration of the established departments of the State government—that no expenditure beyond an appropriation can be made—these committees are accustomed to proceed in the most extravagant manner, and, consisting as they generally do of a large proportion of lawyers, are, nevertheless, in the habit of employing many and high-priced counsel to assist in their various investigations, and apparently without stipulation or limit as to the charge to be made for counsel fees. Some general law upon this subject would seem most advisable.

This somewhat new scheme of partisan investigating committees has assumed most objectionable and extravagant shape this year, and for the great sums of money now asked from the public treasury not a single beneficial result to the State at large is shown. If the expenses incurred by these committees, in the absence of an appropriation, are proper, it is at least no great hardship that the chairmen thereof should be compelled to show detailed statements of the directions in which this share of the taxes raised by the people of the State is to go. Not far from \$500,000 has been appropriated for like purposes within the last few years, and it seems time to de-

mand stricter compliance with the plain spirit of the Constitution.

“The sum of thirteen thousand dollars, or so much thereof as may be necessary, remaining in the treasury unexpended of the sum of sixty thousand dollars, appropriated in chapter four hundred and thirty-three of the Laws of eighteen hundred and eighty-six, ‘for the expenses of legislative committees, fees of counsel, stenographers, accountants, printing of testimony and other contingent expenses of the Legislature of eighteen hundred and eighty-two, eighteen hundred and eighty-three, eighteen hundred and eighty-four and eighteen hundred and eighty-five,’ is hereby reappropriated and made applicable to the payment of like expenses for the Legislatures of eighteen hundred and eighty-six and eighteen hundred and eighty-seven, and to the payment of such fees of counsel which remain unpaid out of the sum of fifty thousand dollars, appropriated by said chapter four hundred and thirty-three.”

This item is objected to and not approved.

The same reasons given in objection to the previous item apply and are presented to this.

“For the services and expenses of a civil engineer and his assistants in taking the measurements of the Assembly chamber and other portions of the Capitol, to ascertain possible defects in its structure, pursuant to resolution of the Assembly, passed February fourth, eighteen hundred and eighty-seven, the sum of one thousand and eighty dollars, or so much thereof as may be necessary.”

This item is objected to and not approved.

The amount named, it is believed, is grossly disproportionate to the value of the services performed. The work should have been done through the State Engineer and Surveyor, and without extra cost to the State. If the Assembly choose to order work by its individual resolution, the bill therefor should properly be paid from the ample fund allowed for contingent expenses of that body. Besides it ought to be well understood by this time that neither the Assembly, nor the Legislature by joint resolution, can incur an indebtedness for such a purpose against the State.

"For paying the expenses of boxing, transporting and distributing the Code of Public Instruction to the several school districts of the State, under the direction of the Superintendent of Public Instruction, two thousand five hundred dollars, or so much thereof as may be necessary."

This item is objected to and not approved.

The bill for the publication of the Code of Public Instruction not having become a law, this appropriation is not necessary.

"For the Superintendent of Public Buildings, for the alteration of ninety-eight chandeliers and one hundred and twenty-eight brackets on the south side of the Capitol building, so that they may be used for both gas and electric lighting, the sum of seventeen thousand five hundred dollars."

This item is objected to and not approved.

Until the State is in a condition to complete the Capitol building, I am unable to see the wisdom of making expensive changes in the mere furnishings of the rooms. These proposed alterations can certainly wait another year without any public interest receiving serious injury.

"For constructing cases for books, and for galleries and winding stairs connected therewith in the Senate library room, six thousand five hundred dollars."

This item is objected to and not approved.

Until the State can afford to complete the Capitol, it hardly seems wise economy to expend \$6,500 in making changes in a single small and subordinate room.

"For removing books from the Senate library and rearranging them therein, five hundred dollars."

This item is objected to and not approved.

The preceding item having been disapproved, no necessity exists for this expenditure.

“For the purpose of removing obstructions and otherwise improving the navigation of the west branch of the St. Regis river and its branches above and south of the village of West Stockholm, public highways for the passage of lumber, logs and other timber, in the county of St. Lawrence, the sum of five thousand dollars, the said work to be done under the direction of the Superintendent of Public Works.”

This item is objected to and not approved.

While the State is in apparently so impoverished a condition that it is unable to complete the Capitol, it hardly seems an appropriate time to enter upon expenditures of doubtful expediency or propriety. To the previous item, similar to this, I have not made objection for the reason that the State has already begun the work therein described, and a further appropriation seems necessary to make fully available the work already done.

“For the State Land Survey, for completing the engrossing and binding of such portions of the records and maps of the Adirondack Survey as shall be desirable for preservation, and for necessary office and field expenses for the State Land Survey, ten thousand dollars; and the Superintendent of the survey shall make a report to the next Legislature which shall contain such portion of such records and maps as shall be deemed desirable for publication. But no part of this appropriation shall be expended upon the State Land Survey until the completion of the engrossing and binding of such records and maps.”

This item is objected to and not approved.

There is no such department known in the laws of the State as the State Land Survey, and there is no such official as Superintendent of said Land Survey. If, by this item, it is intended to appropriate money to be expended by the so-called Superintendent of the Adirondack Survey, it is not deemed a wise expenditure. Up to 1885 there had been appropriated for Adirondack surveys a total of \$135,540.99. In the report to the Legislature in 1885, the State Engineer says that no record of importance is filed in his office as the result of this survey, except the protests of his predecessors

against its independent existence. The records, if any exist, of the Adirondack and other surveys, should be preserved, but, as was said in the veto of a similar item in 1885, the State Engineer is the proper person to conduct such work, and the appropriation should be given to him, a perfectly competent, responsible and willing official.

Until some well-devised general scheme is adopted, I am opposed to the further expenditure of money by the State for land surveys, and I certainly cannot approve such piecemeal legislation as this item illustrates.

“For printing and binding the fifteenth volume of the Colonial History, as provided in chapter one hundred and seventy-five of the Laws of eighteen hundred and forty-nine, chapter one hundred and sixty-eight of the Laws of eighteen hundred and fifty-six, chapter eighty-one of the Laws of eighteen hundred and fifty-eight, and chapter two hundred and forty of the Laws of eighteen hundred and eighty-five, five thousand five hundred dollars, or so much thereof as may be necessary.”

This item is objected to and not approved.

This work has been in progress since 1839, and there has been expended thus far upwards of \$212,000, as shown by the records of the Comptroller's office. The contract for printing was made in 1851, and it was evidently expected that completion of the work would speedily follow. In that year it was reported to the Legislature by the Governor and Secretary of State that, if all the material collected were published, it would probably make ten volumes, but that much of it ought not to be included.

In 1857 Hon. J. T. Headley, Secretary of State, reported to the Legislature that the work was “poorly compiled,” “uselessly illustrated,” “most extravagant in cost,” “misleading,” “loosely managed;” that there had been expended so far \$168,000, that it would probably cost \$2,000 more, that the entire value was not \$17,000, and could be better computed by avoirdupois weight than by any standard of literary value,

and that "It seems to have been carried on for the benefit of the printers and to support an editor."

A somewhat careful examination leads me to think the conclusion reached by Mr. Headley thirty years ago was, to a great extent, correct, and that the controlling reason for its long continuance is the same. Since the report of Mr. Headley about \$45,000 have been expended thereon, volumes eleven, twelve, thirteen and fourteen have been published, four more than was thought in 1851 would complete it, and there seems now to be no one competent or willing to state the additional number of volumes that will be needed to complete the work. The work does not seem to be conducted in a business-like or systematic way, but to be carried on more with an idea of furnishing an additional position to be filled, than a valuable addition to the State's published records. Already too many sinecure positions have been foisted upon the State under one pretext or another, and I am unwilling to approve the further continuance of this expenditure until at least the publication is systematized and put in charge of some department which can give definite idea as to the time and expense necessary for its completion.

"For repairs of the hospital ship *Illinois*, five hundred dollars; for painting and repairs of the health officer's residence, at the upper boarding station, two thousand dollars; for repairs of the dock at the upper boarding station, fifteen hundred dollars, and for continuing the sea wall, filling in earth and renewing planking at Hoffman's island, six thousand dollars."

These items are objected to and not approved.

Under the existing management of quarantine affairs these appropriations for repairs and renewals are not deemed expedient. The appropriation of ten thousand dollars for maintenance is believed to be amply sufficient, if properly expended, to keep the property of the State in good order. An appropriation of seventy-five hundred dollars for salaries in the



quarantine department has also been made, by a previous act, this year.

DAVID B. HILL.

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MESSAGE TO THE SENATE CALLING ATTENTION  
TO NOMINATIONS MADE BUT NOT ACTED  
UPON BY THAT BODY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 26, 1887. }

*To the Senate :*

The terms of office of the Health Officer of the port of New York, of the Quarantine Commissioners and of the Commissioners of Emigration expired several years ago. In discharge of a duty imposed upon me by the Constitution, I last year transmitted to the Senate nominations for these several offices. The senate neither confirmed nor rejected them. Recently, I caused other nominations for the same positions to be transmitted to your honorable body, but as yet no action has been taken thereon.

It is submitted with all proper deference to the Senate that the Constitution does not contemplate that officials whose terms of office have expired, and who fail to receive a renomination therefor at the hands of the Executive, should be maintained in their positions for years thereafter, because of the refusal of the Senate to take action upon proper and worthy nominations of their successors. It is believed that the citizens of the State desire that these offices should no longer be filled by officials whose terms have long since expired, and that the nominations which I had the honor of recently making to the Senate are honest, competent and

deserving men, possessing the confidence of the people without distinction of party, and that it is due to the State, as well as to the Executive, and to the dignity and good name of the Senate itself, that some definite action should be taken in reference to these nominations now pending before you.

I, therefore, respectfully ask that you do not finally adjourn without disposing of these nominations to these important positions in some constitutional manner.

DAVID B. HILL.

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VETO, SENATE BILL No. 472, THE DISCRIMINATING  
LIQUOR TAX BILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *May 31*, 1887. }

Memorandum filed with Senate bill No. 472, entitled "An act to tax sales of beverages in certain cases." Not approved.

No hearing upon this bill has been applied for, and none seems to be necessary. It was not passed with any expectation that it would ever become a law, and it can be readily disposed of.

The measure concededly violates every just principle of taxation enunciated by me in my veto of the "Crosby Bill," (so-called), and hence it was well known that its approval was impossible.

It purports to be a revenue measure, and not one for reform or to promote temperance. Its ostensible object is to provide means to support the State government, and, therefore, moral considerations cannot, with propriety, be urged in its behalf. It does not assume an intention or desire to restrict or reduce the number of licensed places, but merely to

raise taxes from the sales of liquor, and the more licenses there are granted the greater will be the revenue. The bill is, therefore, to be considered and discussed purely as a financial measure, and not one intended for the promotion of temperance.

As a revenue measure the bill is objectionable for these reasons:

*First.* The tax is not uniform throughout the State. The bill, among other things, imposes a tax of four hundred dollars upon places having first-class licenses in the cities of New York and Brooklyn, while in the other cities of the State the tax varies from two hundred dollars to fifty dollars upon the very same kind of places. The tax is based according to resident population, rather than upon the amount of business done. There is no pretense of equality in its imposition. At the crowded fashionable summer resorts in the country—the places upon the lakes, in the mountains and at the glens and springs, where vast profits are made in the sale of liquors—the taxes would be but trifling; while the great constituencies of New York and Brooklyn are compelled to pay the highest rates. Taxes should be equal and uniform throughout the State. The United States liquor license tax is based upon that principle, and is the same everywhere. In Ohio, Michigan, Texas and Illinois the State liquor tax is uniform in all parts of those States. Yet this bill is purposely made unlike the United States law or the law of these other States, so that the Executive could not consistently approve it. The object seems to have been more to embarrass the Executive than to promote temperance legislation or to raise revenue by fair and equitable means.

*Second.* The bill provides that the taxes raised shall go into the State treasury, rather than into the treasury of the localities where the licenses are granted. These license taxes should properly be applied for the reduction of local taxation.

No good reason can be urged why one locality granting a number of licenses should be compelled to share with another locality or with the State at large any portion of the public tax imposed on account of the granting of such licenses. Each locality should have the full and entire benefit of its own local taxation. The State does not need to insist upon such compulsory and unfair division as is proposed. Home taxation for home purposes presents the true principle.

The weight of State taxation is slight, while local taxation is burdensome and needs the relief which this revenue would furnish it. If the Legislature sincerely desired to raise additional revenue for the State, it could have passed the admirable measure for the taxation of corporations recommended by the Comptroller, whereby State taxation could be materially reduced—but the bill was defeated. The tax payers of the State would have appreciated the relief afforded by so just, practical and equitable a measure—but the Legislature would not pass it.

Whatever taxes the liquor traffic ought reasonably to bear, whether imposed in the shape of license fees or otherwise, should go into the local rather than the State treasury. As well might it be proposed to pay the license fees for hacks, carts, places of amusement, sidewalk permits and all other fees for privileges of like character into the State treasury, instead of the municipal treasury of the locality interested, as to attempt to do what this bill proposes.

If liquor taxes should not be permitted to remain at home for use in making local improvements and paying expenses of local government, then the State might as well take and appropriate the rents which cities receive of ferries, piers and bulk-heads, and street railroad franchises and other local revenues.

In Ohio all the proceeds of its liquor tax are paid into its county treasuries. In Michigan, Illinois and Minnesota, all

such taxes are paid into the city, town and village treasuries, and even under the recently enacted law of Pennsylvania it is required that four-fifths of the revenue derived from liquor license taxes shall be paid into the local treasuries.

But this proposed law is not modeled after the statutes of other States, and is glaringly unjust to particular localities. In brief, it taxes two-thirds of the State for the benefit of about one-third. It is partial, crude and unprecedented in its provisions. The people do not want any such measure. The independent press of the State is opposed to it. It was conceived in political expediency, born of political hypocrisy, and has had its growth in rank injustice and in the utter violation of every correct principle of taxation.

This legislation is a fair sample of all the alleged temperance legislation of this winter. "The art of how not to do it" could not be more conspicuously illustrated, and the whole purpose seems to have been to hoodwink and deceive the honest temperance sentiment of the State, without, in fact, doing any thing to aid the cause of temperance.

DAVID B. HILL.

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VETO, SENATE BILL, NOT PRINTED, APPROPRIATING  
MONEYS TO PAY INDEBTEDNESS INCURRED BY  
LEGISLATIVE COMMITTEES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 24, 1887. }

*Statement of item of appropriation objected to and not approved, contained in Senate bill, not printed, entitled "An act making appropriations for certain expenses of government."*

The item herein specified, contained in Senate bill, not printed, entitled "An act making appropriations for certain

expenses of government," is objected to and not approved for the reasons hereafter stated :

"For the Comptroller to pay for services of counsel to the committee on taxation and retrenchment of the Senate, fees of stenographers and witnesses, traveling expenses and stationery therefor, during the years eighteen hundred and eighty-six and eighteen hundred and eighty-seven to the close of the present session of the Legislature, pursuant to resolutions of the Senate passed in eighteen hundred and eighty-six and eighteen hundred and eighty-seven, six thousand dollars, to be audited by the Comptroller."

This item is objected to and not approved.

The employment of counsel and stenographers by legislative committees from time to time, and especially during the recess of the Legislature, is an expensive and unsatisfactory system, and inevitably leads to abuses. Lawyers and stenographers are apt to solicit such employment, and thus induce committees to make engagements which their own good sense repudiates. It is possible that such services have been honorably engaged and performed in good faith. In this particular case no intimation to the contrary is intended to be made, and individual injustice may result from non-payment for the services rendered. But the Executive has no way of checking such loose methods and of enforcing the adoption of a more regular and economical system except by refusing Executive approval of appropriations for the payment thereof. The results of the work of this Senate committee and its counsel, as shown in the crude, imperfect and ill-digested legislation of the past winter, do not justify the expenditure of the large sum appropriated by this bill therefor. It is understood that this committee proposes to continue its sittings during the present recess with similar employments. In my judgment this is a wholly unnecessary proceeding, and I know of no more effective method of expressing my disapproval thereof than by striking out this item.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
1276, TO REGULATE THE SALE OF LIQUORS IN  
QUANTITIES OF FIVE GALLONS. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 24, 1887. }

*Memorandum filed with Assembly bill No. 1276, entitled "An act to regulate the sale of strong and spirituous liquors, wine, ale or beer in quantities of five gallons or upwards." Approved.*

This bill prohibits the sale of liquors, wines, ale or beer in quantities of five gallons or upwards, in those cities, towns or villages wherein the local authorities do not grant a single retail license.

The bill is defective in that it should have been passed as an *amendment* to the general excise law of the State (Laws of 1857-1870) rather than as a distinct and independent act. But the Legislature having adjourned, and there being now no opportunity for correction, I am not disposed in this instance to insist upon this technical, though entirely proper objection. The bill passed the Legislature with substantial unanimity, and seems to be the only temperance legislation of the recent session of any particular merit.

Aside from the question as to the propriety of the form of the act, there can be in other respects no reasonable objection urged to the measure. It carries out the principle of local option. It is in accordance with the doctrine of home-rule. It permits each locality to determine for itself whether there shall be any wholesale as well as retail liquor selling within its borders.

Under existing laws the selling of liquors in quantities of five gallons and upwards is not regulated or prohibited, nor is

any license required therefor. This bill merely changes such laws by prohibiting wholesale liquor selling in those localities only where there are no licenses, whatever, granted. It seems reasonable that in those places where the temperance sentiment is so strong that no licenses for retail liquor selling are desired to be granted, that they should also have the privilege and option of forbidding sales by the wholesale, which is the purport and effect of this bill.

The measure applies to the whole State and is uniform in its operation. It does not make any unfair discriminations. It recognizes the democratic principle that the people of each locality may regulate their own local concerns in their own way, and affirms the theory of local self-government in reference to excise as well as other matters. Neither does it do any injustice to any interest that requires protection. It does not assume to divert any revenues which properly belong to the locality affected, nor does it seek to transfer such revenues to the State, which would not be appropriately entitled to them, but leaves undisturbed all existing provisions in reference to the granting of licenses.

It may not be inopportune in this connection to suggest that if all excise legislation attempted during the past winter had been based upon the fair, equitable and salutary principles recognized in this measure, there might have been something accomplished in behalf of temperance, good government and true reform. When undertaken in the right spirit, and not merely for the accomplishment of partisan purposes, there is no substantial difficulty in framing just and proper, as well as liberal excise laws, which shall afford ample security to every interest, and at the same time recognize the growing sentiment in favor of more effectively checking intemperance and restraining its evils. It is needless to suggest that such laws should be fair and equitable in their provisions and uniform in their operation. They should provide that licenses should be granted



by the local authorities, and not otherwise, and all the revenues derived therefrom—whether called fees or taxes, or by whatever name they may be called—should belong to the localities under whose authority the licenses are granted. The sums exacted should be reasonable in amount so long as the granting of licenses prevails as the general policy of the State, and the minimum license fee fixed by statute should be uniform, while the maximum sum, if not also definitely fixed (and unless it be found impracticable and less satisfactory to have the same based upon the amount of business done and graded proportionately, which would surely always render it fair and equitable) might then be left to the discretion of the local authorities everywhere, thereby exemplifying the principle of home-rule, and enabling any locality desiring to impose a higher license fee than the uniform minimum one, to have the privilege of doing so. Thereby the policy of local option is sustained, the principle of home-rule is illustrated, and the responsibility for a moderate or a high license is thrown upon each locality which is to be benefited, injured or affected by the course which it itself adopts. Such legislation, if carefully and intelligently framed, would, it is believed, prove reasonably satisfactory, and while violating no just policy or proper principle of taxation, would enable public sentiment upon the liquor question to manifest itself in accordance with the desires of a majority of the people of each community.

This measure, so far as it goes, is in substantial accord with the general principles herein and heretofore enunciated, and I have no hesitation in approving the same.

DAVID B. HILL.

MEMORANDUM FILED WITH SENATE BILL No. 365,  
THE POUGHKEEPSIE BRIDGE BILL. AP-  
PROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 25, 1887. }

*Memorandum filed with Senate bill No. 365, entitled "An act to amend chapter eight hundred and ninety-seven of the Laws of eighteen hundred and seventy-one, entitled 'An act to incorporate the Poughkeepsie Bridge Company for the purpose of constructing and maintaining a bridge, appurtenances and approaches to the same, over the Hudson river, at a point or points between the city of Poughkeepsie and the town of Lloyd, Ulster county, on said river.'" Approved.*

There seems to be a widespread misapprehension as to the provisions of this bill. It is not a measure authorizing the original construction of a bridge over the Hudson river at Poughkeepsie. Such a bridge was authorized to be constructed by an act of the Legislature passed in 1871, and the company then incorporated is now engaged in its erection. By the terms of the original act (and the amendments thereto since made) the bridge was required to be fully completed on or before January first, 1888. The proposed act simply extends the time for such completion for one year longer, to-wit: until January first, 1889. It contains no other provisions.

The question of the propriety of originally authorizing the construction of such a bridge is not properly before me. The Legislature years ago duly authorized its erection, and the bridge company has proceeded in good faith to construct it, having already expended over two millions of dollars, and fifteen hundred workmen are now engaged in the work. It is conceded that there is a fair prospect that the bridge may be

completed before January first, 1888, and that no further time may be actually needed, but, for fear of accidents and to insure a better construction, the company desires the short extension provided for in this bill.

The only question presented upon this state of facts is, whether any good reasons exist for the refusal to allow the time asked for. If any such reasons really exist, they are not apparent. It should be borne in mind that the question of the repeal of the original act is not before me. There was such a proposition pending in the Legislature, but it met with little favor, and was defeated. The Executive alone cannot repeal the original act, nor has he any power to prevent the construction of the bridge. It is now being legally built, and is likely to be completed under existing laws, and no action on his part can prevent it. A refusal to approve the extension desired may embarrass and annoy the officers of the bridge company or the contractors, and hasten the completion of the structure, but it can probably do nothing more. Under these circumstances it would seem that the Legislature, having in its discretion passed this act, and it involving no constitutional question, an arbitrary refusal on the part of the Executive to approve the reasonable extension of time asked for would be an utterly unjustifiable exercise of power.

This is the view which all my predecessors who had the subject before them since the passage of the original act have taken of the matter. Governor Hoffman in 1872 approved a similar extension, Governor Robinson did the same in 1878, and Governor Cornell approved of additional extensions both in 1880 and in 1882, and these prior extensions were granted when little or no progress had been made in the construction of the enterprise, while at the present time the bridge is rapidly approaching completion, and although the necessity for the extension may not be so pressing as heretofore, there are less grounds for its refusal than then existed.

Under this view which I take of my duty, I do not feel justified in withholding my approval from this measure, and it becomes unnecessary to consider any of the other questions so ably presented before me upon the argument of this bill.

DAVID B. HILL.

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VETO, SENATE BILL No. 251, TO TAX BUCKET  
SHOPS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 25, 1887. }

*Memorandum filed with Senate bill No. 251, entitled "An act to tax bucket shops." Not approved.*

In my last annual message I made the following recommendation :

"It would seem to be desirable that other and new methods of raising revenue should be devised, in order to relieve the people from the burdens of increased direct taxation. \* \* \* Another form of special taxation has been suggested, which is to require a specific tax to be paid upon all contracts for the sale of stocks, or bonds of corporations, or for the sale of petroleum, drugs, cotton, tea, coffee, pork, grain and other produce, which contracts are popularly known as the transactions of 'bucket shops,' so-called, wherein such property so assumed to be sold or purchased is not understood in fact to be sold or purchased, or intended to be transferred or delivered, but the transactions are in effect, though not in form, bets or wagers upon the future market prices of such property. These transactions are immense, and are increasing in amount throughout the State, and, being difficult to prevent or to control by law, they could be restricted to some extent by being subjected to a special *percentage tax, graded in proportion to the amount of the operations*, and could be made to yield a handsome annual income to the State. Such a species of taxation would work no injustice to any legitimate business, and those who engage in such purely speculative

and non-productive methods of obtaining a livelihood can easily afford to liberally contribute toward the expenses of the government of the State which protects or tolerates their peculiar vocation. It need hardly be stated that the legitimate business transactions of any regular broker, banker or commission merchant are not intended to be included in this suggestion for taxation, nor is it desired that they should be affected by the proposed legislation."

While this bill follows in part the suggestions then made, it wholly disregards one of the essential elements upon which such a tax can be justified, to-wit: that the tax imposed should be equal in its operation. It does not impose "a percentage tax, graded in proportion to the amount of the operations," but imposes upon "bucket shops" in New York and Brooklyn a tax of three hundred dollars a month, upon those in Buffalo a tax of one hundred and fifty dollars a month, and upon those in all other places a tax of seventy-five dollars a month. This tax is exacted irrespective of the amount of business transacted or profits realized. It is a tax upon an occupation, and yet it does not assume to impose an equal burden upon all those pursuing it wherever they may happen to reside. It discriminates against those residing in certain cities, and is thus partial, unfair and unjust in its operation. A State tax upon the occupation of a lawyer, a plumber, a minister, a brewer or a merchant, if not based upon the amount of business transacted, or net profits or salary earned, or otherwise equitably graded, but imposed simply upon the occupation itself, should be of the same amount everywhere.

It was upon this same just principle that occupations were taxed during the war by the Federal Government, and were equal everywhere and in every place, regardless of population. The present Federal liquor tax and tobacco tax are the same in every part of the State and Nation—city and country alike—and this bill should have followed the same equitable rule. An occupation in a large city is not necessarily more lucrative than a similar one in the country. If the receipts

are usually larger in the former, the expenses are proportionately greater. To impose or adjust a tax upon an occupation based solely upon the amount of the population of the place where it is carried on is exceedingly improper and wholly unsatisfactory. To assert that such a tax is equal is merely a speculation. It is liable to be grossly unjust. There should exist a reasonable certainty that taxes are uniform and equal. At least there should not exist in the statute imposing them glaring evidences of their probable inequality. The author of the bill admitted, in his argument before me in its behalf, that it was not urged upon moral grounds, but purely as a revenue measure. In his printed brief he also states: "It is not claimed that the measure is exactly just."

It is conceded that the bill is liable in the respects mentioned to the same objections which were urged against the "Crosby" and "Vedder" bills, so-called. Yet the Legislature, knowing of these valid and unanswerable objections, and well knowing that it could not consistently receive Executive approval, insisted upon its passage. It was a perfectly simple and easy task to have amended the bill, relieving it from these objectionable features, and making the tax imposed a uniform and equal one throughout the State. There could have been no reasonable criticism offered against such a bill, and I would have cheerfully approved it.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL, NOT  
PRINTED, FOR A PUBLIC MARKET IN ALBANY.  
APPROVED

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 25, 1887. }

*Memorandum filed with Assembly bill, not printed, entitled "An act to amend chapter two hundred and twenty-four of the Laws of eighteen hundred and eighty-seven, entitled 'An act to provide for a public market in the city of Albany.'"* Approved.

The situation seems to require the approval of this measure. The original bill for the purchase of a market-site was not approved by me, but became a law without my signature. It was before me for ten days awaiting action, but not a single citizen or taxpayer appeared in opposition to it, and, under such circumstances, I permitted it to become a law. Since then a site has been duly selected, and this bill simply provides for the expenditure of an increased amount of money deemed necessary to procure additional land admitted to be needed.

A public hearing was given on the bill, and at the request of both sides it was postponed for further consultation and to await some contemplated legal proceedings. Since then I have heard nothing of the matter excepting the receipt of certain resolutions from a committee of citizens in opposition to the bill, but no further hearing has been requested.

The mayor of the city thinks the bill a necessity under all the circumstances and requests my approval. I have had but little time to consider this matter and I am forced to rely largely upon the judgment of the mayor, and believe it is my duty to approve the bill.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 529 — TEACHERS'  
LICENSES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 25, 1887. }

*Memorandum filed with Assembly bill No. 529, entitled "An act in relation to the licensing of persons to teach in the public schools of this State." Not approved.*

This bill provides for the licensing of teachers by the State Superintendent of Public Instruction instead of the local school authorities as now provided by law. The present system has existed for many years, and if so radical a change is to be made the measure should be most carefully framed.

One serious objection to this bill is that while it purports to be a State measure, applicable to all the schools of the State, it substantially exempts the cities of New York and Brooklyn from its provisions. No good reason exists why, if those cities are to be exempted, the other cities of the State should not also have a like exemption. There are some arguments why cities should not be included in the bill at all, and why its provisions should only apply to the schools of the rest of the State which are more intimately and directly under the jurisdiction and control of the State Superintendent, but it is difficult to discover why a portion should be included and others excluded. The bill should be consistent in its discriminations.

Having already during the past winter disapproved several bills upon the express ground that their provisions discriminated *against* the cities of New York and Brooklyn, I cannot now consistently approve one which discriminates in *favor* of those cities. Let all the cities of the State be included or let them all be exempted, would seem to be the proper course.



In justice to the Department which recommended the bill it should be stated that as originally proposed the bill made no exemptions, but the objectionable changes were made during its progress in the Legislature.

It becomes unnecessary to consider any of the other questions involved.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 600, TO PROVIDE FOR  
THE ACCOMMODATION OF THE ZOÖLOGICAL  
COLLECTION IN CENTRAL PARK, NEW YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 25, 1887. }

*Memorandum filed with Assembly bill No. 600, entitled "An act to provide for suitable buildings and accommodation for the zoölogical collection in the Central Park in the city of New York." Not approved.*

By this bill it is proposed to change the site of the Central Park zoölogical collection now in the custody of the park department. If this bill were approved the collections would still remain in the park, and I believe that in a very short time still another removal would have to be made at large expense to the city.

After most careful consideration of the questions involved, I have concluded to withhold my approval of this measure. In doing so I fully realize the annoyance which the present situation of the collection causes those who reside in that vicinity of the park, and I am aware that much ampler accommodations should be given to the animals that compose the collection. This should be done not only for the comfort of the animals themselves but also in order that the thousands of

children and citizens who yearly visit the collection may be enabled to enjoy its educational benefits to a much greater degree than is possible in its present contracted condition. But I also realize that a decided public sentiment exists that Central Park is not properly the place for a zoölogical garden of such a size as befits the dignity and wealth of New York city. This present adverse action is, therefore, taken largely in the hope that the disapproval of this bill will materially aid in securing in the near future some suitable location where ample room will encourage the organization and allow the exhibition of a zoölogical collection and garden which will rival, as they should, those famous and interesting ones of London, Paris, Antwerp and Philadelphia.

DAVID B. HILL.

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MEMORANDUM FILED WITH ASSEMBLY BILL No.  
1209 — ELECTRICAL SUBWAYS IN NEW YORK  
CITY. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 25, 1887. }

*Memorandum filed with Assembly bill No. 1209, entitled "An act in relation to electrical conductors in the city of New York." Approved.*

It is of the utmost importance that the electric wires in the city of New York should be placed under ground as soon as possible. Every good citizen having the best interests of the city at heart is desirous of seeing this done. But if this bill is not approved, the methods and machinery partially provided by existing statutes for the accomplishment of the work will prove of no avail and the removal of such wires is indefinitely postponed.

There is only one objection to the bill of any consequence, and that relates to the failure to add two additional city officials as commissioners. The mayor is added, and it would have been preferable if the commissioner of public works and the comptroller had also been included. Upon the bill coming into my hands I respectfully requested that it be recalled for the purpose of making such amendments, but the Legislature, by a decisive vote, refused so to do. This was a mistake which I very greatly regret.

The question is presented, however, should this objection be permitted to destroy the rest of the bill? Public sentiment seems to favor the measure, notwithstanding this objection. All the leading newspapers of the city are urging that it should become a law.

The people want the wires placed under ground, and care but little who does it, provided it is well, promptly and satisfactorily done. They have no interest in the squabbles or complaints of disappointed contractors or patentees who want to do the work or to have their own particular patents used by whoever does it. The interests of private individuals should not stand in the way of a great public improvement desired by every one.

It is true that the local authorities have expressed their disapproval of the measure, but solely on account of the single objection aforesaid. Two political organizations have announced their opposition to it for diverse reasons. The measure, however, is in no sense a political one.

While I have much respect for the local authorities and for these political organizations and greatly regret to differ with their judgment upon this or any other matter, I cannot resist the conclusion that the best interests of New York will be subserved by the approval of this bill. Being so convinced, I believe that it is my duty to approve the measure.

DAVID B. HILL.

## LIST OF BILLS UNSIGNED.

The following is a list of bills remaining in the Governor's hands at the time of the adjournment of the Legislature which did not receive his approval within thirty days and, therefore, failed to become laws, together with memoranda relating thereto:

Assembly bill No. 755, to appropriate \$15,000 for the continuance of the surveys of the public lands.

A similar appropriation in the supply bill of 1885 was disapproved by me for reasons then stated, which still hold good. (See page 129 of Public Papers of 1885.)

Assembly bill No. 1031, to appropriate \$4,000 for the improvement, enlargement and the removal of obstructions from the channel of Dead creek, in the town of Van Buren, Onondaga county, and providing for proper care of the overflow or leakage from the Erie canal.

The State officials specially charged with the cognizance of such matters deny the recitals in this bill of overflow or leakage from the canal, and of improper drainage on the part of the State. Such admissions in a statute, if untrue, are very dangerous, and might conclude the State when claims for damages therefor, thus openly invited, should be presented. The State officials report that the locality referred to in this bill is a natural swamp not caused or contributed to by the canal.

This bill is also mandatory, giving no opportunity for the State officials to exercise their judgment as to whether or not the work should be undertaken, whereas they are the very persons best qualified to judge of the expediency of expending such local appropriations. Local appropriation bills should ordinarily be permissive, merely authorizing the proper officials

to expend the money appropriated if, in their judgment, such expenditure is proper and necessary.

Assembly bill (not printed), to appropriate \$12,000 for the enlargement of the State dam at Port Byron.

This sum would be insufficient to complete the work proposed. The work could not be begun and left incomplete without rendering the whole system useless. It would, therefore, be exceedingly unwise to commence the work until a sufficient sum is appropriated to complete it.

Assembly bill No. 565, to appropriate \$6,000 to repair the damage caused by the State to public highways between Fort Miller bridge and village, in Washington county, and in the town of Northumberland, in Saratoga county.

The recital in this bill of damages caused by the State is claimed by the State officials to be discordant with the facts. If this bill should become a law, such recital would constitute an admission, probably conclusive upon the State, of having caused such damage, and might bind the State to the payment of numerous unfounded claims.

Senate bill No. 273, to appropriate \$5,000 for the construction of iron bridges, in the place of present wooden bridges, over the feeders to the Chenango canal in the towns of Hamilton and Madison, in Madison county.

The State officials report that these wooden bridges are mostly in good condition, and that iron bridges are not necessary or appropriate substitutes therefor.

Senate bill No. 275, to appropriate \$2,000 to enlarge a stone culvert under the approach to a bridge over the Erie canal to the town of Whitestown.

The State officials report that the enlargement of this culvert is not necessary for State purposes, or by reason of any acts of the State, but would only promote drainage for private

interests, rendered necessary in part by obstructions caused by one or more individuals requesting the State to perform the work.

Assembly bill No. 970, to appropriate \$2,000 for the construction of an iron draw-bridge on the towing path of the Erie canal in the village of Fultonville.

If I am correctly informed this bridge is not needed for public travel, but would only serve limited private interests.

Assembly bill No. 935, to appropriate \$3,000 for the construction of a sewer under the Erie canal, at its intersection with Andes avenue in the city of Utica.

The State officials report that this sewer is not needed for State purposes, and is not rendered necessary by reason of any acts of the State, but is merely an ordinary city sewer for city purposes. The State is under no obligation or liability to construct or contribute to the construction of such sewers. The usual and proper practice is for the State officials to give permission to the city authorities, under proper conditions, to construct sewers under the State canals. Such permission can be given by the proper State officials without any further legislation.

Assembly bill No. 485, to declare Deer river, in the county of Lewis, to be a public highway, and to appropriate \$3,000 for removing obstructions and otherwise improving said river for the passage of logs, lumber and other timber from New Boston, in the town of Pinckney, to Lorraine road, in the town of Montague, county of Lewis.

The erroneous impression seems to be widely prevalent that the declaration of a stream to be a public highway places the State under an obligation to improve and maintain the same, and to pay riparian owners all damages caused by the use thereof as a public highway. No such obligation or liability exists. (See veto of Assembly bill No. 1033 of this year.)

Usually at least one year is interposed between the act declaring a stream to be a public highway, and the act to appropriate moneys for its improvement. The State is under no obligation or liability, and it has not been the policy of the State, to undertake river and harbor improvements, except where the waters are really public thoroughfares. Moreover, if this work were to be undertaken by the State at all, it should be under the supervision of the Superintendent of Public Works, whereas this bill provides that the work be done under the superintendence of a special commissioner to be appointed by the Governor.

Assembly bill No. 1026, to appropriate \$5,000 for the expenses of a commission to be appointed for the purpose of making examinations and trials of recent inventions of military small arms suitable for the use of the National Guard.

The principal argument urged in support of this bill is the necessity of correspondence in calibre between the arms used by the State and by the United States. It is considered probable that the United States will soon make examinations and trials with reference to a change of the calibre of the arms carried by United States troops. Considering the superior facilities which the general government has for making examinations, trials and tests of military inventions, there seems to be no good reason why the State should, at the present time, undertake to make experiments which are apparently unnecessary, nor does there appear to be any such pressing necessity for immediate action that we cannot afford to wait for the decision of the general government.

Assembly bill No. 1024, to appropriate \$25,000 for the erection of an armory in the village of Olean, Cattaraugus county, for the use of the National Guard in said county.

Senate bill (not printed), to appropriate \$20,000 for the erection of an armory in the village of Middletown, Orange county, for the use of the National Guard in said county.

In neither of these localities has there been a company of the National Guard organized for a full year. It does not seem wise for the State to expend such large sums for the erection of armories until the companies for whose use armories are to be constructed have been organized long enough to insure reasonable permanence. An existence of one full year should be the minimum condition of such an appropriation. On this basis I have this year approved of similar appropriations for armories at Saratoga Springs, Hoosick Falls and Mt. Vernon, in each of which localities companies have been organized for more than a year.

Senate bill No. 457, to define the duties of dock masters in the city of New York.

Defectively drafted. This bill proposes to define the duties of dock masters by reference to a previous act, which is referred to only by a misquoted title, without mention of chapter, year or date of passage. The courts would not undertake to identify the act referred to. As the substance of the bill depends entirely upon the reference to the previous statute, the bill would have no effect if it became a law. I regret exceedingly that my approval of this bill would be useless, as the objects sought to be gained are thoroughly approved by the local authorities of New York city, and are, as I believe, highly meritorious. But this error cannot now be corrected so as to give the bill any vitality, without calling an extra session of the Legislature. The Legislature ought to employ competent counsel, to be charged with the responsibility of seeing that all such errors in bills are called to the attention of the Legislature before final action is then had thereon.

Assembly bill No. 1101, to authorize the village of Mt. Vernon to raise additional tax on annexed territory.

Defectively drafted. Section 5 of the bill, by clerical error, continues in force all the provisions of a previous act not con-



sistent with this act. The word "consistent" was manifestly intended to be "inconsistent."

Assembly bill No. 1085, to amend the charter of the village of Fredonia.

Defectively drafted. By clerical error this bill proposes to amend section 41 instead of section 43 of the charter, as intended, thus accidentally destroying existing provisions of more importance than the amendments proposed.

Assembly bill No. 802, to amend the general law providing for liens of livery-stable keepers. (Chapter 498 of 1872.)

Defectively drafted. The bill amends section one of the amended act "to read as follows," etc., and then proceeds with an independent section two, covering the subject-matter of section two of the amended act, but leaving section two of the amended act standing. Section two of this bill should have amended section two of the amended act "to read as follows," etc. While the courts would undoubtedly construe this bill in accordance with the intention of its framers, yet such slovenly legislation, unless containing provisions of vital importance, ought not to be allowed to deface the statute books.

Assembly bill (not printed), for the preservation of fish in Lake Erie.

Defectively drafted. The use of the word "whercon" for "wherever," destroys the sense of an important provision.

Senate bill (not printed), to authorize business corporations organized under chapter 611 of the act of 1875, to mortgage their real estate.

Defectively drafted. This bill should have been drafted to amend section 13 of the act of 1875, which provides that the corporations formed thereunder may issue bonds, but by manifest oversight omitted to authorize the execution of mortgages to secure such bonds. This bill, however, is drafted as independent of and merely supplemental to the act of 1875, and provides that "every corporation formed under this act" may

mortgage, etc. But no corporations can be formed under "this act." Corporations formed under the act of 1875 were evidently intended. If this bill should become a law, the authority of the corporations formed under the act of 1875 to mortgage their real estate would still remain substantially as doubtful as at present. No practical benefit would, therefore, result from Executive approval of this bill. I regret this very much, as it is desirable that these corporations should have unquestionable authority to mortgage their real property, and as the absence of such authority is clearly a *casus omissus* in the original act.

Assembly bill No. 556, to amend sections 887 and 892 of the Code of Criminal Procedure as to disorderly persons.

Defectively drafted. The bill proposes to amend section 892 "to read as follows," and by manifest oversight omits an important provision added at the end thereof by an amendment made in 1886.

Assembly bill No. 1035, to amend the charter of the "State Woman's Hospital."

Defectively drafted in several minor respects, no one of which is perhaps fatal, but in combination give an appearance of slovenly legislation. While the subject of the bill as expressed in the title is to amend the charter, the bill itself is partly amendatory and partly independent of the existing charter. As this is a private or local bill, the failure to correctly express the subject in the title would at least raise a question as to its constitutionality. The object of the bill appears to be meritorious, but the delay of another year to perfect its form can cause no serious damage.

Assembly bill No. 849, to amend the general law for laying out highways, by compensating commissioners to assess damages at the rate of five dollars per day.

Defectively drafted. The bill is so worded that it is apparently the commissioners of highways who are to receive the

compensation, instead of the commissioners to assess damages, and it is difficult to say which way the courts would construe the bill.

Assembly bill No. 439, to amend the general act for the incorporation of credit, guaranty and indemnity companies. (Chapter 611 of 1886.)

Defectively drafted. The bill sets out to amend certain sections of the amended act "so as to read as follows," etc., including section 8 thereof. While making a comparatively trifling amendment to subdivision 3 of section 8, the bill accidentally drops out subdivision 4 thereof entirely. These companies can much better afford to lose all the amendments proposed by this bill than to lose the omitted subdivision 4.

Assembly bill No. 560, to amend section 2 of chapter 597 of the Laws of 1870, relating to the assessment of real estate on account of bonded debt incurred in the construction of railroads.

Defectively drafted. The chapter proposed to be amended by this bill, having been entirely repealed by section 6 of chapter 336 of the Laws of 1880, is beyond the possibility of amendment.

This bill is another of the frequently recurring illustrations of the propriety of my repeated recommendation to the Legislature that competent counsel should be employed by them to see that all bills should be in proper legal form before they reach the Executive Chamber.

Assembly bill No. 638, to amend the New York City Consolidation Act so as to exempt property owned or leased by the German-American School Society from taxation.

Defectively drafted. The bill proposes to amend section 824 of the Consolidation Act by adding a new subdivision thereto, to be known as subdivision 16. Subdivisions 16 and 17 have already been added to said section by acts passed in 1885 and 1886, which were evidently overlooked by the author of this bill.

Senate bill (not printed), to incorporate the Binghamton Masonic Board of Trustees.

Defectively drafted and unnecessary. While the object of the bill as expressed in the title is to incorporate, the body of the bill does not purport to incorporate, but merely establishes a joint board with certain limited powers which these trustees already have under existing laws. As this is a private or local bill, its object should, in accordance with the Constitution, be correctly expressed in its title. Upon conference with the representatives of the parties interested, it is understood that they are satisfied that they can fully carry out the plans which this bill was intended to promote without the necessity of further legislation.

Senate bill No. 522, to amend the general law relating to the powers of boards of supervisors. (Chapter 482 of 1875.)

Defectively drafted. This bill proposes to add a new subdivision to section 1 of the amended act, to be known as subdivision 35. But subdivisions 35 and 36 have already been added to said section by the Laws of 1880 and 1881. This bill was not intended to amend the present subdivision 35, which provides for a wholly different subject.

Assembly bill (not printed) to amend section 2 of chapter 180 of the Laws of 1845, authorizing towns to have one commissioner of highways instead of three.

Defectively drafted. This bill provides that immediately upon the adoption of a resolution therefor at a town meeting, the terms of all commissioners of highways for such town shall immediately expire, and thereafter one commissioner shall be elected annually. The wording of this bill fairly raises the question whether such election could take place before the next annual town meeting after the resolution should be passed, thus leaving the town without any commissioner at all for the intervening year. But, in any event, the present

law allows the change to be made from three commissioners to one with sufficient rapidity.

Assembly bill No. 848, to authorize the town of East Chester, in Westchester county, to have three commissioners of highways.

Unnecessary special legislation. All that is sought by this bill is already provided for by a general statute. (See Laws of 1845, chapter 180, section 2, as amended by chapter 455 of the Laws of 1847.)

Senate bill No. 474, to authorize the county of Lewis to have but one superintendent of the poor.

Unnecessary special legislation. The object sought can be gained by existing general law in substantially the same manner as proposed by this bill. (See chapter 498 of the Laws of 1847 as amended by chapter 298 of the Laws of 1862.) If there is any special statute preventing the application of this general law to Lewis county, then the proper method of accomplishing the object of this bill would be by repealing such special statute.

Assembly bill No. 530, making it a misdemeanor for parties cutting ice in Cazenovia lake to omit the maintenance of proper guards around the openings caused by such cuttings.

Wholly unnecessary special legislation. Section 429 of the Penal Code contains substantially the same provisions applicable to all waters within the boundaries of the State. Competent advisory counsel would have saved the Legislature from the manifest absurdity of presenting such a bill for Executive consideration.

Assembly bill (not printed), to enable the villages of Tarrytown and North Tarrytown to construct sewers.

Unnecessary special legislation. These villages already have, by general laws, all the powers sought to be conferred upon them by this special bill.

Assembly bill No. 710, to incorporate the Highland Fire Engine and Hose Company No. 3, of the village of Florida.

Assembly bill No. 1160, to incorporate Seth N. Hedges Post, No. 216, of Dansville, Livingston county, Grand Army of the Republic.

These two bills are wholly unnecessary special legislation. Both of these organizations can become incorporated for all the purposes proposed in these bills, by filing certificates, etc., as provided by existing general statutes.

Assembly bill No. 1004, to amend the charter of the city of Brooklyn, with reference to buildings within the fire limits, and to granting licenses to sell liquors in places where concerts are given.

Unnecessary special legislation. This bill was evidently drafted and passed by the Legislature under the erroneous impression that chapter 281 of the Laws of 1862, prohibiting the sale of liquors in certain places of amusement in all cities and incorporated villages, was still in force. But that act has since been repealed. There is now no restraint upon the granting of licenses to sell liquors in places of amusement, except when prohibited by special acts. There being no such special act applicable to the city of Brooklyn, the excise authorities in that city already have all the powers proposed to be granted them by this act.

Senate bill No. 447, to incorporate the International Loan, Trust and Guarantee Company.

The special legislation proposed by this bill has become unnecessary by reason of a general act for the incorporation of companies of this nature passed by the present Legislature, and which is declared by the Superintendent of the Banking Department to be as liberal in its provisions as is consistent with due safety.

This bill also contains a serious clerical error, using the word "with" for "worth" in an important connection, and which cannot now be corrected.

Senate bill (not printed), to establish a ferry from Gunnison's ferry in the town of Crown Point, in Essex county, across Lake Champlain.

The provisions of this bill prohibiting any other ferry within a specified distance of the ferry proposed to be established, are clearly in violation of section 18 of article III of the Constitution, prohibiting the passage of a private or local bill granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever. Governor Tilden vetoed a similar bill on this ground in 1875 (see page 2 of veto messages of Governor Tilden for that year), and the Court of Appeals has since confirmed Governor Tilden's opinion. (98 N. Y. 150-152.) The Constitution applies to Essex county as well as to other parts of the State.

Assembly bill No. 747, to release a portion of the abandoned Genesee Valley canal to adjoining land-owners.

This bill is certified as having passed by a majority vote in the Assembly. The Constitution requires that it should have received a two-thirds vote. An investigation of the records of the Assembly shows that it did not there receive the requisite vote, and my approval of the bill would be useless.

Senate bill No. 477, to incorporate the Masonic Hall Association of the city of Buffalo.

The only objection to this bill is the clause exempting the property of the proposed corporation from all general taxes for State or municipal purposes. A general act exempting all similar corporations from taxation might be unobjectionable, but it is unfair and unjust to exempt certain select corporations of this nature by special laws, leaving other similar bodies, equally entitled to claim exemption, to bear their regular share of taxation, with such increase as results from the exemption of their more favored neighbors. Equality and uniformity, as between all parties similarly situated, are fun-

damental principles of just taxation, and can only be obtained by general laws. I regret that the objectionable clause was inserted in this bill, as otherwise it is highly meritorious, and I should gladly approve it.

Senate bill No. 241, to amend the charter of the Methodist Episcopal Hospital in city of Brooklyn.

This bill exempts all the property of this hospital from taxation, and is amenable to the same objection as the last above-mentioned bill, with one exception. The amended section already contains the exemption provisions. This bill merely continues the provision already in force and amends the section in other respects. Nevertheless, these sporadic exemptions of here and there a charitable institution by special legislation, instead of uniform exemptions by general laws, work such manifest injustice and inequality as between charitable institutions of the same general nature, exempting some and thereby increasing the burden on others equally deserving, that I am not now willing to approve any special bill which contains such exemption provisions.

Assembly bill (not printed), to continue the exemption from taxation of the property formerly owned and now occupied by the Bedford Reformed Dutch Church, so long as the same shall be used and occupied by said church and society for church purposes.

The reasons assigned for disapproving the two last-mentioned bills apply with full force to this bill also, and prevent my approval thereof.

Assembly bill No. 338, directing the commissioners of excise of the town of Corning, in Steuben county, to pay one-half of the moneys arising from licenses for the sale of liquor in the village of Corning to the St. Joseph's Orphan Asylum of said village.

The poor authorities throughout the State are now prohibited by law from allowing pauper children to remain in the poor-houses, and are required to place them instead in



orphan asylums controlled by authorities of the same religious faith as the parents of such children, or in families. Under this law all the various orphan asylums are, or are entitled to be, paid by the proper authorities for the support of all the pauper children in their custody. Orphan asylums have the care of but very few children who are not entitled to entire or partial support from the regularly constituted poor funds. These asylums should be fully paid for the care of such children under existing laws. For the State to go further and authorize them to receive public moneys for the support of indigent children who are not legally entitled to receive help from the poor authorities would be a dangerous precedent.

Moreover, the application of excise moneys should, as far as possible, remain uniform throughout all the towns of the State. In accordance with this salutary doctrine, a statute contributing a portion of the excise moneys of the town of Corning to the Corning library was several years ago repealed, and all further special legislation in that direction ought, on general principles, to be discouraged. Moreover, this bill is mandatory in its provisions, leaving no discretion anywhere to proportion the amount of moneys to the needs or services of the asylum. If any legislation of this nature is desirable it should at least leave the amount to be given to the determination of the local authorities. The people of the town of Corning, under the authority of general laws, are the proper persons to say what disposition shall be made of their local revenues. The supervisor of the town, who is their official representative, protests against this bill and claims that the people of the town are opposed to it, and his opinion should be given such weight as his official position entitles it to.

Senate bill No. 557, to amend chapter 269 of the Laws of 1880, relating to the review of illegal, erroneous and unequal assessments, by allowing costs against the municipality in all cases where judgment shall be directed in favor of the petitioner.

As the law now stands the petitioner does not recover costs unless it shall appear to the court that the assessors or other officers acted with gross negligence, in bad faith, or with malice. This is as far as the law ought to go in awarding costs to the petitioner. It should be borne in mind that the act of 1880 is essentially a matter of favor to the party assessed. He has his "day in court," and it is his duty to appear before the assessors, when they sit, according to due notice to hear complaints and correct their rolls. If he fails so to appear, and afterward finds fault with his assessment, he should not be allowed costs for mere correction of inadvertent errors on the part of the assessors.

This bill is specially opposed by the local authorities of New York city, where its provisions would be unjustly burdensome.

Assembly bill No. 813, to amend the New York City Consolidation Act in relation to wooden buildings.

This bill has been rendered unnecessary by reason of a more elaborate act embodying substantially the same provisions, having become a law on the 15th of this month.

Senate bill No. 199, to authorize the alteration of a portion of Melrose avenue in New York city.

This bill is opposed by the local authorities. Owing to the limited time at my disposal I have concluded to defer to their judgment.

Senate bill No. 377, to authorize the alteration of certain streets in the 23d ward of New York city.

This bill is opposed by the local authorities. Owing to the limited time at my disposal I have concluded to defer to their judgment.

Assembly bill No. 96, to amend section 210 of the New York City Consolidation Act relative to the disposition of excise moneys.

This bill is also opposed by the local authorities, and owing to the limited time at my disposal I deem it the safest course to defer to their judgment.

Assembly bill No. 1142, amending the New York City Consolidation Act relating to notices to unknown owners of lands sold for taxes.

Assembly bill (not printed), amending the New York City Consolidation Act relating to permits for stands in streets.

Senate bill No. 451, to authorize the comptroller of the city of New York to audit the claim of James D. Hall.

Senate bill (not printed). Parade ground in Central Park.

Each of these four bills is opposed by the local authorities of New York city. Owing to the limited time at my disposal I have concluded to defer to their judgment.

There were 338 bills left in my hands by the Legislature at its adjournment. In the limited time allowed by the Constitution such consideration as I have been able to give the following bills has not convinced me that I should approve them, and I have, therefore, allowed them to expire without action.

Senate bill No. 517, to amend section 2667 of the Code of Civil Procedure, relative to administrators' bonds.

Senate bill No. 192, to amend the charter of Rochester.

Senate bill No. 193, relating to Manhattan avenue in the city of Brooklyn.

Assembly bill No. 491, to amend the Code of Criminal Procedure relating to witnesses in criminal cases.

Assembly bill No. 1006, relating to Franklin and Eighteenth avenues in New Utrecht.

Senate bill No. 130, to authorize the closing of Jewel street in Brooklyn.

Assembly bill No. 1231, relating to the department of parks in Brooklyn.

Senate bill No. 423, to amend section 1252 of the Code of Civil Procedure.

Senate bill No. 430, to authorize the repairing of Johnston avenue in Brooklyn.

Assembly bill No. 274, relating to the compensation of stenographers for grand juries.

Assembly bill No. 453, to enlarge the corporate limits of Binghamton.

Senate bill No. 355, to amend sections 3068 and 3070 of the Code of Civil Procedure relative to appeals from justices' courts.

Assembly bill No. 1664, to amend the charter of Albany relative to taxes on manufactories.

Assembly bill No. 586, for the relief of religious societies in Kings county.

Assembly bill No. 850, for the improvement of road in Newtown.

Assembly bill No. 763, Westchester Trust Company, incorporating.

Assembly bill No. 1204, to change the name of East Chester creek to East Chester river.

Assembly bill No. 1127, to compel the assignment of mortgages.

Assembly bill No. 650, to authorize stockholders in corporations to vote per capita.

Assembly bill No. 816, relating to Brooklyn Equity Gas Light Company.

Assembly bill No. 241, to amend section 872 of Code of Civil Procedure.

Assembly bill No. 474, for inspection of steam vessels in Onondaga, Oswego and Tompkins counties.

Assembly bill No. 840, relating to Irving and Sedgwick streets in Brooklyn.

Assembly bill No. 902, relating to excise moneys in towns.

Senate bill No. 165, to amend Chatham village charter.

Assembly bill No. 1128, relating to the audit of the accounts of game and fish constables.

Assembly bill No. 657, regulating demand prior to actions for conversion.

Assembly bill No. 1136, authorizing purchase of Syracuse Water-Works Company property.

Assembly bill No. 661, amending sections 2263 and 3215 of Code of Civil Procedure.

Assembly bill I. 1445, amending charter of New York and Canada Bridge Company.

Assembly bill No. 1189, amending Jamestown charter.

Assembly bill No. 846, amending Revised Statutes relative to sheep killed by dogs.

Assembly bill No. 667, for dissolving Hope Savings Bank of Albany.  
Senate bill I. 729, amending act relating to Oswego police department.  
Senate bill No. 547, relating to applications for legislation authorizing Board of Claims to audit.

Senate bill I. 736, amending act for division of school commissioner districts.

Assembly bill No. 941, amending Judiciary Act (1847, chapter 280).

Senate bill No. 77, relating to Brooklyn board of aldermen.

Senate bill No. 124, amending sections 1242 and 3160 of Code of Civil Procedure.

Assembly bill No. 1250, to incorporate the city of Middletown.

Assembly bill No. 384, amending act for relief of corporations.  
(McIntyre bill.)

Assembly bill No. 1264, amending act relative to election of school officers.

Assembly bill No. 577, relative to voting by ballot on tax propositions at town meeting.

Senate bill No. 407, to provide for issuing licenses for persons to marry.

Assembly bill No. 1066, amending act for construction of railroads in counties. (Burns bill.)

Assembly bill No. 544, amending chapter 455 of the Laws of 1847, relative to fees of referees in highway proceedings.

Assembly bill No. 1134, Brooklyn East River Bulk Head and Pier Line, relating to.

DAVID B. HILL.

DECISION DISMISSING THE CHARGES PREFERRED  
AGAINST JAMES W. RIDGWAY, DISTRICT ATTOR-  
NEY OF KINGS COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 29, 1887. }

*In the Matter of the Charges against James W. Ridgway, Dis-  
trict Attorney of Kings County. Decision.*

These charges were presented by Mr. Anthony Comstock against District Attorney Ridgway, on the eve of election last fall, when his then term of office had nearly expired, and when he was seeking a renomination and re-election. The charges merely related to his alleged failure to prosecute with sufficient diligence persons charged with violation of the laws against pool selling. Ridgway was re-elected by the people of Kings county by an increased majority, and is now serving out the first year of his second term. There are no charges against him affecting his administration of his office during his present term.

The charges in question were duly served upon the district attorney, and he appeared and served his verified answer in January last, and thereupon upon such answer, which specifically denied or explained all the charges against him, accompanied with voluminous documents, records and affidavits corroborating his answer, he moved before me to dismiss the said charges, whereupon an argument was duly had by the district attorney in person in favor of such motion, and by Mr. Anthony Comstock in opposition thereto, but owing to my engagements during the legislative session I have been unable until now to further consider the case.

Since the presentation of such charges and the argument of such motion, a committee of the Legislature has investigated Kings county affairs, and, among other things, investigated the conduct of the district attorney's office, and both the majority and minority reports upon that subject have been submitted to me in pursuance of a resolution of the Assembly, without specific recommendation, but for such consideration or action, if any, as I might think they were justly entitled to receive.

The first question presented is, whether a district attorney, now serving his second term, can properly be removed by the Executive for misconduct occurring during his first term. This is a serious and important question and not free from difficulty. It should be stated that this point is not pressed by District Attorney Ridgway, who asks that the case may not be determined upon it. Nevertheless the point is in the case and it cannot well be overlooked.

While technically such power may exist, the courts have not been inclined to favor it.

Only recently the General Term of the Third Judicial Department of this State held, upon an application for the removal of a judicial officer upon charges relating to acts committed during a prior term of office, that "the court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the People of the right to elect their officers." (*See opinion of General Term, Learned, P. J., Feb. Term, 1887, In the Matter of Charges against Grogan, police magistrate.*) The same rule applicable to courts would apply to the Executive.

But the case can as well be disposed of upon its merits.

There seems to be no necessity for any further hearing, as the legislative investigation appears to have been sufficiently thorough.

The minority report of the committee bears evidence of careful consideration and calm, judicial treatment.

Having confidence in the ability, integrity and fairness of Messrs. Greene and Cutler (the minority of the committee), I can with propriety accept their conclusions in this matter. They hold in substance that these charges are groundless, and were inspired by partisan or personal malice.

It is unnecessary to discuss the details of the case, and it is sufficient to state that it is apparent that any further inquiry would be fruitless, and only result in a useless expense to the county of Kings. Upon the whole case as now presented to me, I am satisfied that there is no occasion for Executive interference, and the charges are hereby dismissed.

DAVID B. HILL.

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ORDER DISMISSING OTIS V. HINCKLEY FROM THE  
OFFICE OF U. S. LOAN COMMISSIONER FOR  
THE COUNTY OF CHAUTAUQUA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

WHEREAS, On June 15th last the Comptroller of the State presented to me a report and complaint showing that Otis D. Hinckley, a commissioner for loaning certain moneys of the United States of the county of Chautauqua, had been guilty of misconduct in his said office in that he had neglected and refused for the space of ten days after the receipt by him of a notice from the Comptroller of the State of New York requiring him to give additional security as provided by statute, to give such security; and

WHEREAS, Accompanying said report were the reasons for requiring such additional security; and

WHEREAS, A copy of said report was, on the 23d day of June last, duly served upon the said commissioner, with an



order requiring him to appear and make answer in writing to said report, complaint and charges, and show cause why he should not be removed from such office, before me at the Executive Chamber, in the Capitol in the city of Albany on the 7th day of July, 1887; and

WHEREAS, The said commissioner duly appeared before me on the said 7th day of July, 1887, and filed an answer in writing to the said charges, which answer did not deny the failure of the said commissioner to file additional security in pursuance to the request of the Comptroller as provided by statute; and after hearing the said Otis D. Hinckley, commissioner aforesaid, in his own behalf, and after due consideration and it being established that the said Hinckley has neglected and refused for the space of ten days after the receipt by him of a notice from the Comptroller of the State of New York requiring him to give additional security, as provided by statute, to give such security;

*Now, therefore,* It is hereby ordered that the said Otis D. Hinckley be and is hereby removed from the office of commissioner for loaning certain moneys of the United States of the county of Chautauqua in accordance with the statute in such case made and provided.

Given under my hand and the privy seal of the State,  
[L. s.] at the Capitol in the city of Albany, this 8th day  
of July, 1887.

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,

*Private Secretary.*

## INTER-STATE EXTRADITION — CALL FOR A CONFERENCE OF STATES TO ESTABLISH UNIFORM RULES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *July* 12, 1887. }

SIR — The desirability of a uniform system of rules and practice in the matter of the inter-state extradition of fugitives from justice seems to be conceded.

While the regulations and practice of the States in general may be considered substantially similar, they are widely divergent in details and particular requirements.

In consequence of the increase of the criminal class, the large additions made to the number of crimes at common law by statutory enactments resulting from the growth of our commercial system, and the increased facilities of travel between the States in recent years, the necessity of improving the present inharmonious procedure in this important branch of criminal law seems clearly to exist.

It can hardly be doubted that in many instances fleeing criminals are afforded an opportunity of escaping from the consequences of their acts, that vexatious delays often occur, and that unnecessary expense results by reason of the want of a mutually established system of extradition regulations.

With a view of correcting these evils, correspondence has been had with the Governors of the States which adjoin New York as to the propriety of concerted action by all Governors in the adoption of a uniform system of rules and practice. As the result of this correspondence it has been decided to call a conference of representatives of the different States and Territories to meet at the Murray Hill Hotel in the city of New York, at noon, on the 23d day of August, 1887. It is

probable that it will be arranged to hold the sessions of the conference at the rooms of the New York City Bar Association.

You are, therefore, urgently invited to join in the proposed conference by sending a delegate to the same, and it is desirable that you notify the Governor of New York, at the earliest possible date, of your acceptance or declination of the invitation.

It is desirable that the representatives should be persons who have had experience and training in the study and practical operation of the extradition laws, that they should have with them the existing rules, statutes, forms, etc., of their respective States, and that they should be clothed with sufficient power to give the assent of the Governor represented by each to such regulations and practice as may be adopted by the conference.

Theodore W. Dwight, LL. D., warden of the Columbia College Law School, and Samuel T. Spear, the eminent writer on the law of international and inter-state extradition, have been invited to meet with the representatives.

Further particulars may be ascertained, if desired, of William G. Rice, Private Secretary of Governor Hill, Executive Chamber, Albany, N. Y.

OLIVER AMES,

*Governor of Massachusetts.*

EBENEZER J. ORMSBEE,

*Governor of Vermont.*

P. C. LOUNSBURY,

*Governor of Connecticut.*

JAMES A. BEAVER,

*Governor of Pennsylvania.*

DAVID B. HILL,

*Governor of New York.*

[NOTE. — In pursuance of the above call, which was forwarded to the Governors of the several States and Territories, representatives of the Governors of the following named States: California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and Wisconsin, and a representative of the Chief Justice of the Supreme Court of the District of Columbia, assembled in New York on the date specified. The conference lasted three days and resulted in devising a uniform system of practice which was recommended to be adopted by the Executives of the several States and Territories. A committee was also appointed to draft a bill to be offered in Congress amending the statutes of the United States so as to correspond with rules adopted by the conference, and to provide a complete method of procedure in the extradition of fugitives.

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PLEURO-PNEUMONIA AMONG CATTLE — ORDER  
PRESCRIBING REGULATIONS FOR THE SUP-  
PRESSION OF THE DISEASE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

ORDER.

In pursuance of the authority vested in me as Governor of the State of New York by chapter 134 of the Laws of 1878, entitled "An act in relation to infectious and contagious diseases of animals," I do hereby prescribe the following regulations for the suppression of contagious diseases among domestic animals and the prevention of the spread of the same:

The local boards of health throughout the State shall report to me at once the breaking out of any contagious disease

among the domestic animals in their respective districts, and especially of contagious pleuro-pneumonia among cattle. They shall likewise notify, at the same time, the Chief Inspector of the Bureau of Animal Industry of the United States at Washington, D. C., of the appearance of contagious pleuro-pneumonia.

When contagious pleuro-pneumonia exists in any portion of the State of New York, the Bureau of Animal Industry of the United States will take charge of the work of suppressing the disease and preventing its spread, as provided by chapter 155 of the Laws of 1887, entitled "An act to co-operate with the United States in the suppression and extirpation of pleuro-pneumonia."

The Inspectors of the said Bureau of Animal Industry shall place in quarantine all animals affected with contagious pleuro-pneumonia, or that have been exposed to contagious pleuro-pneumonia, and all premises infected or believed to be infected with the contagion of said disease. All persons are hereby prohibited from moving quarantined animals from the premises where quarantined, and all persons are prohibited from placing on said premises or among said animals quarantined any healthy animals of the kind among which the contagion of said disease exists.

Whenever the Chief Inspector of Animal Industry finds that contagious pleuro-pneumonia exists among the herds in any county of this State, and believes there is danger of its spreading to other counties, he shall give notice of the existence of said contagion in a county by publication once a week in at least one newspaper published in said county, and warn all persons from moving any animals of the kind diseased to any other county of the State. He shall likewise notify in writing an agent of each transportation company doing business in said county, and warn said company from transporting any animals of the kind diseased from said county to any other

county in the State, without a permit from an Inspector of the Bureau of Animal Industry. All persons are hereby prohibited from driving or transporting by rail or water or vehicle of any kind, or offering for shipment, any animal of the kind diseased from any county in which contagious pleuro-pneumonia is declared to exist by the Chief Inspector of the Bureau of Animal Industry in the manner herein provided, to any other county in the State; provided, however, that animals may be transported to other counties when a permit is given therefor by an Inspector of the Bureau of Animal Industry.

All railroads doing business in a county infected with contagious pleuro-pneumonia shall cause their stock-yards, pens and stock cars to be cleaned and disinfected in such manner as may be directed by an Inspector of the Bureau of Animal Industry, and under the supervision of said Inspector.

Given at the Capitol in the city of Albany this tenth  
[L. s.] day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,  
*Private Secretary.*

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## REWARD FOR THE APPREHENSION OF THE MURDERER OF JOHN WALKER.

PROCLAMATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

WHEREAS, on or about the twenty-third day of June, 1887, in the city of Cohoes, county of Albany, JOHN WALKER,

a resident of the county of Saratoga, was brutally murdered, as alleged, by some person or persons not yet apprehended,

*Now, therefore,* a reward of one thousand dollars is hereby offered, to be paid to any person who shall cause the arrest and conviction in this State of the party or parties who committed the murder of the said JOHN WALKER.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this twelfth  
[L. s.] day of September, in the year of our Lord one  
thousand eight hundred and eighty-seven.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,  
*Private Secretary.*

# THE CIVIL SERVICE—AGE OF APPLICANTS FOR THE POSITION OF PRISON GUARD OR KEEPER.

STATE OF NEW YORK.

OFFICE OF CIVIL SERVICE COMMISSION,      }  
ALBANY, *September 7, 1887.* }

At a meeting of the Civil Service Commission held on the sixth day of September, 1887, it was

*Resolved,* That the maximum age for application for positions for prison guard or keeper, except honorably discharged soldiers and sailors, shall be fifty years at the time of application, and the minimum age twenty-one years.

Approved September 7, 1887.

DAVID B. HILL,  
*Governor.*

## THANKSGIVING PROCLAMATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

The mountains clothed with trees, the valleys filled with corn, the meadows rich with cattle, the streams making the fields green, everywhere speak the goodness of God. And He has blessed us beyond all other nations in wide-reaching fertile farms, with their multitude of contented country homes, and in the busy streets of our many prosperous cities; these all bound together by majestic natural water-courses and by great highways built by the genius and industry of our people.

The Giver of all Good Gifts has especially granted us happiness and welfare in the year that is ending. We have been kept in health, we have been preserved from strife within our borders and in peace with foreign States, we have been given abundant harvests and have seen great increase in our material wealth.

It has long been our custom to observe in grateful public and private remembrance of God and His mercies a day set apart for worship and for re-union of friends and kindred. Therefore, by the power vested in me as Governor of the State of New York, I do appoint Thursday, the twenty-fourth day of this November, as a day of Thanksgiving.

Let the people then rejoice. And that all may be partakers in rejoicing, let the spirit of Christian charity abound, and thus the hungry be fed, the naked clothed, the prisoner visited and the ignorant taught the foundations upon which our freedom rests.

Done at the Capitol in the city of Albany this first day  
[L. s.] of November, in the year of our Lord one thousand eight hundred and eighty-seven.

By the Governor :

DAVID B. HILL.

WILLIAM G. RICE,

*Private Secretary.*



## PLEURO-PNEUMONIA AMONG CATTLE—SUPPLEMENTAL ORDER RELATING TO.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

## ORDER.

In pursuance of the authority vested in me as Governor of the State of New York by chapter 134 of the Laws of 1878, entitled "An act in relation to infectious and contagious diseases of animals," I do hereby prescribe the following supplemental regulations for the suppression of contagious diseases among domestic animals and the prevention of the spread of the same.

Whenever the Chief Inspector of the Bureau of Animal Industry shall have given notice, as required by Executive Order of August 10th, 1887, of the existence of contagious pleuro-pneumonia or of the existence of the contagion of that disease in any county of this State, it shall thereafter be lawful for said Chief Inspector, in his discretion, to cause all neat cattle in such county to be numbered, tagged and registered, and all persons are hereby prohibited, after notice given, as aforesaid, from moving any such cattle or allowing any such cattle to stray from any place or premises to any other place or premises, and from allowing any such cattle to be upon any highway or upon any unenclosed land without a permit duly issued and signed by an Inspector of the said Bureau, and from and after notice given as aforesaid all persons keeping cattle in any such county are hereby required to give immediate notice to an Inspector of the said Bureau of the sickness or death of any cattle belonging to them or in their possession, and also of all births that may occur in their herds and of all other additions

thereto, and from and after notice given as aforesaid all persons are hereby prohibited from offering or receiving within any such county any cattle for transportation or removal in any manner whatever and from transporting any cattle in any manner, whether from any place in such county to another place within the county or to a place out of the county without a special permit duly issued and signed by an Inspector of the said Bureau.

Given at the Capitol in the city of Albany this eighth  
[L. s.] day of December, in the year of our Lord one  
thousand eight hundred and eighty-seven.

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,

*Private Secretary.*

## ADDRESS OF GOVERNOR HILL

AS

PRESIDENT OF THE STATE BAR ASSOCIATION, DELIVERED JANUARY 18, 1887.

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GENTLEMEN:—One of the greatest of American lawyers once said: "Justice is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness and the improvement and progress of our race; and whoever labors on this edifice with usefulness and distinction, whoever cleans its foundations, strengthens its pillars, adorns its entablatures or contributes to raise its august dome still higher in the skies, connects himself in name and fame and character with that which is and must be as durable as the frame of human society."

This sentiment, so beautifully expressed, finds a responsive chord in the heart of every true and honorable member of our profession. We are workmen upon this edifice of Justice, reasonably skilled in all the arts of our calling, fairly experienced in the use of legal implements, somewhat disciplined in the arduous labor of enforcing the right, protecting the weak and opposing the wrong, and the work which we perform upon the structure, if it is conscientious, intelligent and self-respecting, should be as enduring as it is inestimable in value, and exalted in character.

The followers of the law should be the zealous advocates of justice. In one sense—perhaps the broadest and best sense—the law is justice itself. The popular idea, however,

is perhaps better expressed in the words of that critic who has said: "The law is a sort of hocus-pocus science, that smiles in your face while it picks your pocket; and the glorious uncertainty of it is of more use to the professors than the justice of it." This humorous, though erroneous conception of one of the greatest of sciences, is harmless, and no such attack, whether serious or otherwise, can undermine what is clearly the strongest foundation of our civilization.

The influence of law is unlimited and boundless. It has established itself "like a beacon lit upon a hill, which after it has diffused its warmth immediately around it, also tinges the distant horizon with its glow." The student of such a science may be pardoned if in his enthusiasm he over-estimates the dignity and importance of the vocation and cause which he has espoused.

Perfection is not claimed for this or any other profession. We have furnished to the world some of the greatest, and the worst and best of men. Pope's characterization of a famous judge as "the wisest, brightest, meanest of mankind" might well be applied to more than one who has dazzled the bar with his brilliancy and humiliated it by his depravity or excesses. The practice of the law affords opportunities for the exercise of the brightest talents, the development of the best and worst of qualities, the attainment of the noblest ambitions or for the most conspicuous failures.

The law is a laborious profession, and the success of a lawyer is largely measured by his industry. Little of his reward comes by accident. Talent, invention, genius, one or all, can accomplish much, but without research, reflection, continuous toil, his triumph will not be complete or conspicuous.

The successes of life obtained by accident are usually neither substantial nor permanent, but fickle and transitory. It is not the noisy advocate, but the quiet student and plodder that accomplishes wonders. Glittering gold and precious

diamonds are not discovered strewn upon the ground, but deep in the recesses of the earth. Nice points of law are not found upon the surface or covers, but way down deep in the books.

Of Ruskin it is said that whenever he heard attributed to this young man great genius and to that young man great talents, his answering question always was, "Has he industry?" And this, indeed, is the foundation of the whole.

Industry has built cities, while genius inactive and talent in repose have but beheld castles in the air. Eternal vigilance is the price of liberty. So no less is eternal diligence the price of real success. Successes there may be, as there have been, of genius alone, but they are ephemeral, and the record even of them fades, but those men and minds that have moved the world onward, that have increased the purpose of their lives, that have left standing monuments for generations yet to come, have been diligent in business no less than fervent in spirit.

It is true that Herbert Spencer says: "We have had somewhat too much of 'the gospel of work,' it is time to preach the gospel of relaxation;" but he must have had in view other professions than ours.

My own views recently expressed in favor of additional holidays for all classes, do not necessarily conflict with the sentiments now enunciated, which are, in brief, that faithful, persistent hard work is absolutely essential to any substantial success in legal contests, and to the acquirement of any thing like eminence at the Bar.

Since our last meeting an important innovation has been made in regard to admissions to the Bar.

By Chapter 425 of the Laws of 1886 the restrictions which prevented women from being admitted to practice as attorneys and counsellors at law in the courts of our State, were removed, and hereafter no female otherwise properly qualified

can be rejected solely on account of her sex. At least one woman has already been admitted under the provisions of this act, and there are now female law students in various parts of the State.

Our profession, with becoming gallantry, will welcome the fair sex in this new field of honor and usefulness which has been opened to them, and will graciously wish them the same high degree of success that years ago marked the efforts of that "well-deserving pillar" of the law, Portia, when she made her able but somewhat technical argument in behalf of strict justice in the forum of ancient Venice.

If the presence of ladies as associate workers in our profession shall tend to develop among us that true politeness and dignified courtesy which should always characterize the demeanor of the members of so honorable a calling toward each other, then the experiment will not have been made in vain. If the influence of woman, usually so potent for good, shall be conducive towards arraying the whole profession more thoroughly on the right side of every public question, the sphere of woman in all occupations may well be more generally extended.

It is to be assumed that at our banquet this evening the toast to "The Ladies" will be responded to with even more than usual zest and interest.

The crowded condition of the business of the Court of Appeals presents a subject for serious consideration. The present calendar of the court was made up May 31, 1886, and it contained 935 cases. Since then cases have been added, by order of the court or otherwise, until they number to-day 1,017 cases. Two hundred and fifty-seven cases have been disposed of, leaving 760 on the present calendar, with which to commence the year 1887. It being impossible to finish the present calendar this year, no new calendar was ordered made up for 1887. In addition to these 760 cases,

about 200 will be added to the present calendar during the year, such as criminal cases and "appeals from orders entitled to be heard as motions." The present calendar contained, when made up on May 31st last, 268 preferred cases, not including "appeals from orders," and there have been filed since that date 327 additional returns—the whole number of returns filed in the year 1886 being 790.

This detailed and accurate information furnished me through the courtesy of the able and efficient Clerk of the Court, demonstrates that our highest tribunal, while faithfully and industriously laboring to keep up with the business before it, is utterly unable to stem the flood of litigation that is poured in upon it, and which is annually increasing. It is impossible to predict within how many years a civil cause upon the general calendar is likely to be reached. The propriety and necessity of some form of relief is apparent.

It is peculiarly within the province of this association to suggest to the Legislature, or to the contemplated constitutional convention, an appropriate plan for the expeditious disposition of the legal business of the State. If the lawyers themselves are unable to devise a remedy, it may well be regarded by laymen that none exists.

Whether it is expedient to still further restrict the cases in which appeals may be brought, or to increase the number of judges of the Court of Appeals, or to create a Commission of Appeals, such as formerly existed, or to establish some other additional court, are questions upon which intelligent opinions may well differ, and are worthy of the most careful attention.

"We are too much governed" is a trite saying, but it is founded upon much truth. But little legislation is required for the actual needs of the State. The evil consists in the vast volume of special legislation which is poured in upon us, and the absence of comprehensive and general laws.

Our legislators seem to prefer special acts whereby they apparently do something for their immediate constituents, rather than to pass a general statute for the benefit of no one in particular, but in the interest of the whole State. Every village wants to obtain a special charter or a special amendment rather than to organize under a general act or accept a general provision. Every private corporation clamors for a special act of incorporation instead of seeking to proceed under a general statute. Each official wants all his doubtful acts legalized by a particular bill for his relief. Our cities refuse to adopt uniform charters.

To the making of laws, like the making of books, there seems to be no end. The number of laws enacted by the Legislature during the past five years has been steadily increasing, notwithstanding a liberal use of the veto power by the Executive. This fact is shown by the following statement, taken from the Session Laws:

Years.	No. of laws enacted.
1882 . . . . .	410
1883 . . . . .	523
1884 . . . . .	551
1885 . . . . .	557
1886 . . . . .	681

It is safe to assert that much of this legislation is not absolutely required. It is to be feared that our profession is considerably at fault for thoughtlessly or hastily advising a large portion of these unnecessary enactments. Many of them are occasioned by the carelessness or stupidity of officials who do not observe the provisions of existing laws, and the readiness with which the Legislature relieves them from the consequences of their imperfect official acts invites looseness in administration. Our legislators are too anxious to please their immediate constituents, rather than to serve the entire State. Our Executives are too much disposed to



gratify the members of the Legislature, rather than rigorously and firmly, and perhaps severely, to oppose all legislation of questionable utility and doubtful propriety.

As lawyers we may be too zealous in expedients, and too critical in our caution or anxiety when suggesting the desirability of special legislation. We should not forget that, while we are lawyers, we are also citizens of a great State—of which we are justly proud—and owe to that State the duty of inculcating adherence to the highest standards and the best methods of legislation, regardless of all other considerations.

Imbued with this exalted sense of duty, it is incumbent upon us to advise the passage of simple, effective and plain laws. They should be concisely expressed and easily understood. They should be condensed wherever condensation is proper and practicable. They should be made by the Legislature, and not by the courts.

For the better preservation of the honor and purity of the profession, it is suggested that a committee be appointed by this body, whose duty it shall be to assume charge or to assist in the prosecution, wherever it can properly be done, of all proceedings for the expulsion of members of the Bar charged with misconduct. To this committee all complaints throughout the State could be presented and its assistance invoked, and in proper cases the committee could proceed, at the expense of, and in the name, and by the authority of this association, to protect the good fame and character of our profession by purging its membership of its unworthy adherents.

Local influences frequently prevent proceedings for disbarment being instituted or prosecuted to a successful termination, although the offenses are flagrant, and it is believed that such influences would have less effect with a committee from the State at large, and a bolder, more thorough and more fearless prosecution would be insured.

"What is everybody's business is nobody's" is a truism which applies with full force to cases where lawyers are guilty of dishonest and improper transactions, and, unless the judges of our courts themselves set the wheels in motion to disbar a lawyer, the instances are very infrequent where others interfere. It is submitted that a higher standard of professional ethics should be raised, to which we should insist upon a steadfast adherence by all whose names are permitted to remain upon the roll of attorneys of the State. Those who injure the fair fame of our profession by the practice of extortionate charges, blackmailing suits, the procuring of speculative injunctions and the presentation and championship of known fictitious claims or contests, or the resort to other questionable proceedings under the forms and apparent sanction of law, should be summarily dismissed from a calling which they disgrace, and this association cannot honor itself better or infuse more vigor into its life than by boldly and energetically inaugurating a system for the purification of the profession.

And now I come to speak of an abuse perhaps not susceptible of exact definition, but one, nevertheless, that exists in many parts of our State. You who have been judges and you who have held public place will comprehend more clearly than others the dangerous aspect of this evil. This abuse is, in brief, the assumption that this judge or that public servant can be reached through some friend, and that the influence of some acquaintance or of some companion is as necessary to be obtained, even by fee, as the services of counsel. This assumption proceeds upon the theory that the social elements of character of the judge must be appealed to by social attentions, and that by these will judgment be swayed, and thus decisions influenced, in part at least, as well as by the greater weight of legal argument.

This is an evil from which not judges alone suffer. Every man who occupies high official position has felt this danger of

having acquaintance with him traded upon, not by those who are really entitled to bear the name of and actually are his friends, but by those who are self-assumed and self-announced, or even by the friends of friends.

Recently a judge of one of our highest city courts said to me: "I have lately had almost to cease social intercourse in public with my fellow-men. My acquaintance when in active political life was large and I was accustomed to greet and freely talk with all I met, even after I assumed a judicial position. But I found that more than one unscrupulous man, after a conversation with me on subjects not in the least connected with cases which were before me as judge, had secretly asserted his influence in these very cases. One cannot be too careful. It is worth a thousand dollars to some men to be seen in conversation with a judge or high official."

If this has happened in a direct case, how frequently is it likely to occur by indirection. And this false dealing with the presumed influence of friends as business capital cannot be met and denounced by the judges or high officials themselves;—they never hear of any such representations. Living, as I believe such assumed influence to do, only in the corrupt imagination of the trader in reputations, this evil strikes in the dark, painlessly at first, but surely defaming by its poison the reputation of the upright man at which it aims. At last the character of the high official or the great judge is undermined, not by fault or weakness of his own, but by the whispered sale for counsel fees of that name beyond all others in man's intercourse with man — the sacred name of friend.

"The purest treasure mortal times afford  
Is spotless reputation; that away,  
Men are but gilded loam, or painted clay."

Every profession has its marked characteristics, and ours is no exception. As a class the active practitioner is naturally

skeptical upon every subject. Deceived so often himself by the story of his client, he becomes accustomed to believe in nothing. In reliance upon the supposed facts of a case he builds up an able and beautiful theory, only to find it suddenly dashed to pieces by the disclosures of his adversary's case. In every litigation he is always treading upon dangerous ground, because he is never certain of the actual facts; he fears surprises, he anticipates the desertion of witnesses, he must guard against the perjury of some who testify against his cause and the blundering stupidity of others who swear in his favor; he must appear bold and confident, when he is, in fact, timid and doubtful. His everyday life is a constant contest, and always fighting the battles of others, he inevitably becomes contentious and difficult to convince.

We have specialists in our profession, as well as among our medical brethren. There are criminal lawyers, patent lawyers, admiralty lawyers, real estate lawyers, corporation lawyers and collection lawyers.

The latter class have many distinct features pertaining to their business, the tendency of which is not particularly to broaden or liberalize their views of our high calling, and they have little standing or influence in our councils. They usually freely advertise in the newspapers, as well as upon their letter heads and envelopes substantially as follows :

<p>“ JOHN DOE, Attorney and Counsellor-at-law. Collection of notes, mortgages and accounts a specialty. Collections promptly remitted. Money loaned. Commissioner for all the States. No- tary Public.”</p>
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They usually visit the court-room on the first day of each term, and having obtained a calendar (upon which they generally have not a single case) they listen to its call apparently

greatly interested, and then take their departure and are not seen again until the next term comes around. The commercial features of this branch of our occupation do not present any very pleasant attractions for the scholarly and ambitious young lawyer.

Then there is the corporation lawyer, who is easily distinguished from his less fortunate brethren by his contented look, indicative of large fees and uncomplaining clients. He is usually attended by his stenographer, type-writer—and a detective—with all the other “modern improvements.”

Next arises to our view the criminal lawyer, versed in all the technicalities of the law, sharp, shrewd and untiring, his very features clean-cut, like his subtle argument, show the man ready to find the least flaw in the accusation or evidence against his client.

But, belonging to every class there is the disagreeable lawyer, who, although concededly “learned in the law,” knows nothing of the courtesies of the profession, conceited in his own opinion, uncouth in his manners, never admitting the possibility of his being wrong, and making the court-room resound with his noisy declamation. How has he been better pictured than by Judge Story in these lines:

“With just enough of learning to confuse,  
With just enough of temper to abuse,  
With just enough of genius, when confest,  
To urge the worst of passions for the best;  
With just enough of all that wins in life,  
To make us hate a nature formed for strife,  
With just enough of vanity and spite  
To turn to all that’s wrong from all that’s right—  
Who would not curse the hour when first he saw  
Just such a man called learned in the law?”

The lawyer here so graphically described is the exception to the generality of our profession. In the main they are gen-

erous, open-hearted, cultivated men, and foremost among the citizens of our country.

My attention has been called to the comprehensive and exhaustive oath the lawyers of Germany must take on being admitted to the bar of the respective monarchical German States in which they live. The "iron-clad" oath which all of us took upon being admitted to practice in United States courts many years ago was as nothing compared to this one. It is as follows:

"You shall promise and swear, that, after his highness, the Duke and Lord, Lord — (here follows the name of the prince), Duke of Saxe-Coburg-Gotha, has granted you the license to practice law as a member of the bar before all courts and public authorities of this State (the dukedom of Saxe-Coburg); you will be faithful, obedient and subject to his highness and his high legal successor in the government; show obedience to the constitution; faithfully keep and observe the laws and ordinances especially, according to your best knowledge and understanding; faithfully and industriously aid everybody, the poor man quite as willingly as the rich man, without fear of the courts, to his right, by advice, speech and action; not overcharge parties with fees; not obstruct the amicable settlement of lawsuits, but further it as much as possible; nor retard or hinder justice in any way whatsoever; never give countenance to dishonest designs of parties, particularly not suggest to any party or any accused person groundless subterfuges and statements contrary to the truth, or recantation; and if you should find the cause of a party, in your persuasion, to be without foundation, or not based upon the law, and you could not amicably dissuade such party, as is your duty to do, from its intent, not represent it in court in such cause any longer; and never, in any case taken in hand by you, speak and act more than you are instructed to do; keep secrets intrusted to you inviolate; take care of and

return in good time public papers and records laid before you or communicated to you; keep safely funds which may be intrusted to you, and give a conscientious account of them; and finally show to the public authorities and courts, before which you will appear as counsel, due respect, and abstain from all invective against the same; also not to be prevented from the fulfillment of these duties either by favor, gifts, friendship or enmity or any other impure motive, and altogether so behave as is becoming and befitting a conscientious and duteous attorney and counselor-at-law.

"Oath—All that has been read to me now I have well understood and solemnly promise to do; I will keep that oath firmly, inviolately and faithfully, so help me God!"

The "Army in Flanders," though said to have been proficient in swearing, never swore like this.

Unique as this oath appears, it, nevertheless, appropriately comprehends the full measure of duty and responsibility which is or should be required of a faithful and upright lawyer in every well-governed country. Its impressive details serve to remind the listener of the gravity and importance of the high trust assumed by those who voluntarily accept the burden and responsibility of interpreting and advocating the laws of a government, and of protecting and enforcing the rights of a people. It emphasizes the fact that the position of a lawyer is that of an official, and that he has sacred obligations to perform, as well as business interests to subserve.

The propriety of adopting the substantial features of the German oath, or one more elaborate or impressive than the one we now administer, may be worthy of serious reflection.

In conclusion permit me to observe that ours is a progressive bar. The Empire State has always been foremost in every legal reform. Antiquated forms and complicated methods of procedure have long since been swept away, and although our system of practice is not by any means perfect, it has

proved reasonably satisfactory and has been adopted as a model by other States.

Whatever shall tend to benefit the State or to raise the standard of the legal profession, or to increase its usefulness or to still further develop its power for good, will be welcomed by every true lawyer and aided by none more readily and cheerfully than by the members of the Bar Association of New York.



STATEMENT  
OF  
PARDONS,  
COMMUTATIONS OF SENTENCE AND REPRIEVES,  
GRANTED BY  
DAVID B. HILL,  
GOVERNOR,  
DURING THE YEAR 1887.



## PARDONS.

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February 26, 1887. Charles Anderson. Sentenced June 19, 1886; county, Chautauqua; crime, burglary, third degree, and larceny; term, two years; prison, Erie County Penitentiary.

The application for this convict's pardon was based entirely on the allegation of his innocence of the offense charged. Upon the trial a handkerchief was produced which was almost positively identified as a portion of the property stolen. This, in conjunction with certain remarks which it was sworn he made in relation to the crime, largely, if not entirely, procured his conviction. From all the other evidence produced it could hardly be doubted that he was guiltless. He was a young Swede of good character, and industrious. The convict's friends, however, were not satisfied that he was guilty, and the result of their investigations, while they do not conclusively point to his innocence, still are such as to leave too much doubt of his guilt to warrant his further imprisonment. The handkerchief, it was shown after the trial, had been purchased by him at a store, while the unfortunate remarks attributed to him are now claimed to have been induced by fear, knowing that he was suspected of the offense. It also appears that the jury had some doubts of his guilt, as they recommended him to the mercy of the court, and since the trial they have joined in a petition for his pardon. The Judge says there are doubts of the convict's guilt, while the District Attorney unqualifiedly recommends a pardon. For the foregoing reasons it seems to be a proper case for the exercise of clemency.

March 7, 1887. William A. Slaughter. Sentenced January 29, 1886; county, Kings; crime, assault, first degree; term, five years; prison, Kings County Penitentiary.

It is urged, as an act of humanity, that the convict be pardoned, as he is now dying of consumption, and can live but a short time. The state of the convict's health is certified to me by the prison physician to be as represented by the former's friends. In support of the application I have a recommendation from the jury that clemency should be shown, and this is concurred in by the presiding Judge and the District Attorney. It also clearly appears that the convict's parents are people in comfortable circumstances, who can give him the care and attention which one in his condition so imperatively needs.

Inasmuch as the convict has now served a considerable portion of his sentence, I am satisfied that a pardon may properly issue at this time, and the convict be permitted to die surrounded by his parents and friends.

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April 12, 1887. Cornelius Cleary. Sentenced March 10, 1886; county, Rensselaer; crime, robbery, second degree; term, six years and six months; prison, Clinton.

The crime for which the convict now lies imprisoned was committed in a house of ill-repute. All parties to the transaction, including the witnesses, were more or less intoxicated, and the latter were all persons of low moral perceptions. In fact, the whole affair seemed to partake more of the character of a drunken brawl than a settled determination to commit a crime. It was shown that the convict's general character, aside from his habit of indulging in intoxicating liquors, was good, and this was the first offense he was ever charged with.

It is now urged that the convict should be shown some clemency, in view of the foregoing facts. To this request both the presiding Judge and the District Attorney assent. While I am clear that the convict should have received some punishment for his acts, still, the term appears to be unnecessarily long. But, in view of the fact that his disgrace and punishment were primarily brought about by his dissolute habits, I have determined that the pardon shall be coupled with the following condition:

This pardon is granted upon the express condition that the said Cornelius Cleary shall wholly abstain from drinking intoxicating beverages for the period of five years from the date hereof; and in the event he violates said condition, he shall be compelled to serve the remainder of the term he would have been compelled to serve but for the granting of this pardon.

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June 2, 1887. John Williams. Sentenced March 31, 1887; county, New York; crime, violating the provisions of section three hundred and fifty-one of the Penal Code; term, six months and fined two hundred and fifty dollars; prison, New York Penitentiary.

The following facts are alleged and believed to be true: The convict was merely acting in a clerical capacity, and carried out the instructions of his superior. When arraigned he pleaded guilty, knowing that technically he had violated the law, but he did so under the advice of counsel, and in the belief that his sentence would be the punishment usually and heretofore imposed in similar cases, namely, a small fine. If he had supposed he would have received a term of imprisonment, he would have stood trial, and taken the chances of an acquittal, by interposing the defense of want of criminal intent.

Considering the well-known infrequency of imprisonment being imposed for this class of offenses, the convict certainly seems to have had grounds for his belief, and is equitably entitled to some relief. In view of the fact that he has already served a month's imprisonment, I have determined to grant his application.

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June 11, 1887. John W. Lake. Sentenced February 24, 1885; county, Steuben; crime, burglary; term, three years and six months; prison, Auburn.

The application for this convict's pardon was made by his son, a young lad about fifteen years of age. This boy had traveled alone from Boston, where his mother lived, to the locality where the conviction was had, and had there circulated a petition for his father's release from prison. This petition he personally brought and presented to me, and pathetically urged that I should grant it. He told me that his mother had, by unremitting toil, saved enough money to enable him to make his journey, that she had secured employment for his father if he should be discharged, and she believed that the convict would hereafter do right and care for his family. This appeal had the sanction of the District Attorney, and in view of the fact that the convict had already served the greater portion of his sentence, I find little difficulty in granting the pardon, in the hope that it might be the means of restoring to society a man who will again become a useful citizen.

July 12, 1887. George Ibach. Sentenced April 20, 1886; county, Genesee; crime, grand larceny, second degree; term, two years and ten months; prison, Erie County Penitentiary.

The guilt of the convict is not disputed, but the crime itself indicates less of long premeditated criminal design than foolishness and a case of momentary temptation to a weak mind. The convict's character up to this time had been of the best, and he cared for his family to the extent of his abilities. He has a wife and two young children, who are entirely dependent upon the charity of friends. It is urged by the complainant and by many of the prisoner's former neighbors and friends that clemency should now be extended, he having already served over one-half of his term. The Judge who presided at the trial concurs in this view, and says that the punishment already received has accomplished all the reformatory effect possible. Considering that this is the convict's first offense, and that there is no likelihood of his again violating the law, I am satisfied that the public interests will not be harmed by a pardon at this time.

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July 27, 1887. Milward S. Loucks. Sentenced October 14, 1884; county, Jefferson; crime, forgery, second degree; term, five years; prison, Auburn.

Clemency is extended to this convict as a reward for furnishing valuable information to the officers of justice, which clemency was promised to him in advance of his disclosing the facts which he possessed. While he was confined in jail previous to his conviction, a large number of prisoners escaped, he among them. He, however, voluntarily returned, but his companions could not be traced. An officer stated to the convict that if he would disclose the whereabouts of the fugitives, he would see that the court gave him a light sen-

tence. Under this promise he gave the information, but the Court, although satisfied that the promise had been made and the information given, could not give effect to the agreement, for the reason that the convict's offense did not permit a penalty of less than five years, thus necessitating an appeal to the Executive in order to give effect to the promise.

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July 30, 1887. Charles Behnke. Sentenced November 11, 1885; county, Onondaga; crime, grand larceny, second degree; term, four years and eleven months; prison, Auburn.

The application for the convict's pardon was made by the District Attorney who prosecuted him. It appears that Behnke had served in the War of the Rebellion, was honorably discharged, and had been for many years an inmate at intervals of various soldiers' homes. The District Attorney says, from some circumstances which were developed after the trial, he began to have doubts of the justness of the conviction. Acting on these doubts, he caused a thorough investigation to be made, which resulted in showing beyond reasonable question that the convict was innocent of the crime. In this conclusion of the District Attorney, the Judge who imposed the sentence heartily concurs. Under these circumstances, it clearly seems to be an act of justice to grant a pardon to this unfortunate man.

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July 30, 1887. William Kenney, *alias* James Smith. Sentenced February 24, 1886; county, New York; crime, forgery, second degree; term, six years; prison, Sing Sing.

This pardon is granted for the reason that too much doubt exists of the convict's guilt, by reason of his mental irresponsibility at the time of the commission of the act, to warrant



his further imprisonment. He is a young man, and, up to the time of the offense, his character had been exceedingly good. This fact has been conclusively shown by letters from those in whom I have very great confidence. Some time prior to the commission of the act for which he was convicted he had been ill for a long time of a brain disease, from which he had not recovered. After a partial restoration to health he became imbued with the idea that he could gain wealth easily by means of forgery, and publicly so stated. His friends, knowing his enfeebled mental condition, paid no attention to these remarks until it was too late. His trial followed his arrest so quickly that his friends and relatives were not informed of it until the trial was about to close—he having given an assumed name—when an effort was made to introduce medical testimony in support of the claim of non-responsibility. Through some misunderstanding, this testimony was not made available until the convict had been taken to prison. I am satisfied, however, that the effort was made in entire good faith, and from the testimony which has been laid before me and which it was intended should be brought before the Court, there can be little doubt that the convict lacked the mental capacity to appreciate the nature and consequences of the act which he committed.

The efforts that have been put forth to secure the convict's release have been those of gentlemen who could have had no possible interest save to further the promotion of justice, and notably among these is the eminent firm of Phelps, Dodge & Company, the complainants, whose goods were obtained by the convict by means of a forged order. The matters thus urged decided me to act favorably in the application that has been made in the convict's behalf.

August 2, 1887. Peter Riley. Sentenced November 21, 1885; county, Herkimer; crime, assault, second degree; term, three years; prison, Auburn.

The facts in this case, as stated by the District Attorney and the presiding Judge, are as follows:

The complainant owed the convict the sum of five dollars. The convict, in a somewhat intoxicated condition, met the complainant and demanded the money. The complainant not only did not accede to this request, but proceeded deliberately to use taunting and insulting language to the convict, which greatly irritated and angered him, and resulted in the convict pulling out a revolver and threatening to shoot the complainant. Soon after the convict pointed his revolver to the floor and fired, no injury whatever being inflicted. Although the indictment alleged assault in the first degree, the Court had no hesitation in accepting a plea of guilty to a lesser offense, as there was evidently no intention to take the complainant's life. The District Attorney, who personally knows the convict, writes that, with the occasional exception of his being under the influence of liquor, he is honest and industrious, and recommends that clemency be extended. The Judge, too, favors this, but suggests, inasmuch as the convict got into his trouble through the use of liquor, a pardon, if granted, should be coupled with the condition that he should refrain from drinking. I have, therefore, decided to pardon the convict, in the hope that it may aid him in regaining a useful place in society, but have annexed the following condition:

If the said Peter Riley shall hereafter be convicted of the crime of intoxication, or of any crime committed while in a state of intoxication, he shall be compelled to serve out that portion of his sentence which he would have been otherwise compelled to serve but for the granting of this pardon.

October 10, 1887. John D. Spencer. Sentenced March 1, 1886; county, Onondaga; crime, grand larceny, second degree; term, three years; prison, Onondaga County Penitentiary.

Numerous letters from people of the highest respectability of the village and county in which the convict resided at the time of the alleged offense, show, beyond question, that he had enjoyed an excellent character and was highly respected. He had been for a considerable period prior to the time of his arrest Deputy Postmaster of the village of Mexico, and from a letter of the Postmaster it appears that he had discharged his duties faithfully. It is contended by the convict's friends that the facts and circumstances of the whole case do not justify the verdict of the jury, and though the offense was technically made out, that the punishment already inflicted is sufficient to answer the demands of justice. It is not denied that the convict, in connection with the affair, is deserving of the severest censure, but many people of his county, including the County Judge and District Attorney, do not hesitate, from their knowledge of convict and the principal complaining witness, to express to me the gravest doubts as to his being guilty of the crime charged against him. The convict having now served the greater portion of his sentence, I am inclined to the opinion that justice will not be defeated if a pardon is now issued, and in this I am supported by the opinion of the District Attorney who prosecuted him. A pardon is therefore issued, in the belief that it will aid this young man in building up a new character, and that he will justify, by his future good conduct, the expectations of his friends and neighbors.

October 11, 1887. Hiram Bargy. Sentenced March 13, 1878; county, Herkimer; crime, arson, first degree; term, life prison, Auburn.

This convict owned and kept a hotel up to the time of the commission of the crime. Becoming financially embarrassed he entered into a conspiracy to burn the property, in order to get the insurance money to relieve his necessities. Of the two others concerned with him in the commission of the crime, one turned State's evidence, and the other was convicted and died in prison.

It is established beyond question that the convict had borne an exceedingly good character; that he was industrious, had faithfully cared for his family, and in all respects enjoyed the esteem and confidence of his neighbors. The purchase and keeping of the hotel proved his ruin, for there he became associated with idle and disreputable characters, whose influence upon him was of the worst possible kind. Moreover, it does not appear that he was a man of very high intelligence, or had enjoyed the best of opportunities for moral improvement. From all I can learn, it is not at all likely that previous to the inception of this offense he had ever entertained a thought of committing crime. It seems that with his clouded moral perceptions he believed he would commit no very great wrong if he burned his own property to obtain the insurance, and that no one would be the wiser. This is evidenced somewhat by the fact that, among other arrangements made by the conspirators to destroy the hotel, provision was made to secure the safe exit of the persons who were in it at the time. This, so far as it goes, does not indicate a wholly depraved mind.

At the time the conviction was had there was only one penalty for his crime—life imprisonment. Since that time the law has been modified so that a term of not less than ten years is now permissible.

Three points were urged by his friends upon the application: First, that destruction of human life was carefully guarded against; second, that he has already served a length of time equal to the usual sentence which is now imposed under the modified law for this offense; and, third, his previous excellent character.

The effort made for the convict's pardon was one of the most unusual that has ever fallen under my observation. A public meeting was held in the town where the crime was committed, which had previously been extensively advertised, at which a free expression of opinion was invited. As a result of this meeting about three hundred citizens of the town, headed by a Judge of the Court of Appeals, resident of the locality, traveled a distance of nearly one hundred miles to urge the convict's release. The sentiment of the great majority of the people of the county, even officers of justice, as well as citizens, clearly appeared to be overwhelmingly in favor of the convict's release at this time. In view of the fact that the convict has already served a longer sentence, allowing for the statutory reduction for good conduct, than is now usually imposed for the crime of which he was convicted, and considering the other matters which have been urged, I am clearly satisfied that this is a case where a pardon may, without public injury, be granted.

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November 14, 1887. Michael Moriarty. Sentenced December 24, 1883; county, Kings; crime, rape; term, six years and six months; prison, Kings County Penitentiary.

It satisfactorily appearing that this convict is lying ill of consumption in the prison hospital, and that he can, at farthest, live but a short time, I have, on the appeal of the grief-stricken father, decided to order his release at this

time, in order that he may receive the care and attention which his parents alone can give him in his last days. In reaching this decision I have the approval of the District Attorney.

Under these circumstances, and considering the further fact that the convict's term has been served with the exception of seven months, I am convinced no injurious consequences will result to the administration of justice by the clemency thus extended.

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December 22, 1887. William White. Sentenced June 18, 1887; county, Oswego; crime, violating the provisions of section two hundred and eighty-four of the Penal Code; term, six months and fined \$500; prison, Onondaga County Penitentiary.

There is too much doubt about the guilt of this convict to justify his further imprisonment, and a pardon is therefore granted.

## COMMUTATIONS.

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January 7, 1887. John W. Stokum. Sentenced April 27, 1875; county, Kings; crime, grand larceny and burglary, third degree—second offenses; terms, ten years and ten years; prison, Sing Sing—transferred to Auburn.

Sentence commuted to imprisonment in Auburn Prison for the term of nineteen years, subject to deduction for good conduct, from April 28, 1875.

This commutation is granted solely to rectify, so far as it is now possible, a mistake in imposing the sentence, which resulted from an erroneous recital in the indictment upon which the convict was tried. The convict had previously been convicted of burglary, third degree, and grand larceny, but the indictment for the second offense recited that the first conviction was for burglary, *second* degree, and grand larceny as second offenses. By this erroneous recital, which was supposed to be true, the Court had no discretion, as the minimum penalty which could be imposed for burglary, second degree, and grand larceny as *second* offenses was an aggregate of twenty years. If the Court had known the facts as they actually existed, it might have imposed a sentence of not less in the aggregate of seven years, and the presiding Judge says he should have made the sentence considerably less had he not been misled, and he now recommends that under the circumstances the convict be given the benefit of some reduction.

January 10, 1887. William T. Murphy. Sentenced March 24, 1886; county, Monroe; crime, abortion; term, two years; prison, Auburn.

Sentence commuted to imprisonment in Auburn Prison for the term of one year, subject to deduction for good conduct, from April 2, 1886.

There can be no reasonable doubt of the convict's guilt of the crime charged against him, as two trials were had. A stubborn defense was, however, made at each. It was claimed by the convict's friends that he was the victim of an unfortunate train of circumstances, and suffered from his accidental association with persons of evil repute. He was a young farmer, steady, industrious and respected by all his neighbors. After his first trial he married the girl upon whom the crime was charged to have been committed, and this he did, as he insisted afterward, under the belief that it would save him from prison. The District Attorney writes to me that he now advises a pardon, as he believes, from a full consideration of the circumstances of the whole affair, that the convict was more sinned against than sinning, and that if a guilty person is ever entitled to pardon, he is. This expression of opinion is concurred in by the trial Judge of the Oyer and Terminer, who writes that he has visited the convict in prison, and that after observation of and conversation with him, is of the belief that the law has been sufficiently vindicated, and the benefits of punishment fully realized. It also appears — however inconsistent such action may be, in view of his previous claims — that the convict has expressed the determination, in the event of his pardon, to live with the woman he married under such unusual circumstances.

I am satisfied, therefore, that considering the matters above set forth, the State will be more benefited by the interposition of clemency than by insisting upon the convict serving his full sentence.



April 7, 1887. Charles H. Southwick. Sentenced October 16, 1875; county, Cayuga; crime, murder, second degree; term, life.

Sentence commuted to imprisonment in Auburn Prison for the term of eighteen years and eight months, subject to deduction for good conduct, from October 18, 1875.

When the act was committed by the convict of which he was convicted he was not quite twenty years of age. At the time he resided with his mother, a widow, on a small farm which she owned, a few miles from the city of Auburn. The father of this boy died when the latter was a mere lad, and consequently he did not receive the peculiar care and oversight which only a father can give. It does not appear that he was a vicious or bad boy; in fact, he was generally regarded as quiet and good natured. He had, however, formed the habit of drinking intoxicating liquors. For a short time prior to the fatal occurrence the convict had been employed by a neighboring farmer in doing general farm work. On the day of the homicide the convict and his employer were at work setting out a willow hedge. This work was accomplished by driving sharpened willow stakes into the ground, and a hatchet was used in the work. At occasional intervals during the day the employer went to the house for hard cider, which he and the convict drank. Sometime during the afternoon, as nearly as can be learned from the evidence, a quarrel arose between the employer and the convict. During this quarrel the employer applied an opprobrious epithet to the convict, and at the same time raised in his hand one of the willow stakes as if to strike. At this instant the convict, in a sudden burst of anger, threw the hatchet which he had near at hand, striking the deceased on the head. The wound resulted in death in a short time. The convict at once went to the nearest neighbors and called for assistance, making no effort to flee.

The above, I believe, constitutes a fair statement of the facts proved on the trial. There does not appear to have been any

adequate motive for the crime, as there was no previous difficulty between the convict and the deceased. It also further appeared that deceased was both violent and quarrelsome, and that he was in the habit of drinking a good deal, which greatly aggravated his naturally irritable disposition. He was in the habit, too, of furnishing wine and other intoxicating drinks to the convict when the latter was in his service.

It seems strange from the foregoing that the jury reached the verdict which was rendered. In a petition, however, which they have signed for his release, they say that their verdict was in the belief that the crime was punishable by a term of years, and that if they had known that the penalty was life imprisonment, a different result would have been reached.

In order to be fully informed of the public sentiment in the locality toward extending clemency to the convict, I sent an Executive Clerk to the town where the homicide occurred, to personally visit the leading men and learn their views. His report to me showed that of the large number of prominent citizens whom he saw, all were in favor of releasing the convict from further imprisonment, and all without exception stated that the verdict was not believed to be just. The Judge of the Oyer and Terminer who presided at the trial now unqualifiedly writes in favor of extending a liberal commutation of the sentence. The convict has already served a sentence, allowing for the statutory reduction for good conduct, which more than equals the punishment usually imposed for the next lower grade of homicide.

Under these circumstances I feel fully justified in granting this commutation, and believe that justice will be promoted by so doing.

August 31, 1887. Louise Doherty. Sentenced May, 15, 1885; county, New York; crime, assault, first degree; term, six years; prison, New York Penitentiary.

Sentence commuted to imprisonment in the New York Penitentiary for the term of two years and four months, actual time, from May 16, 1885.

The following are conceded facts in this case:

This convict was married and had two children, both girls—one quite young. For some time she and her husband had not lived happily together, and at last an agreement to live apart was effected. On the evening of the day the final separation took place an officer was informed that something was wrong in convict's apartments. On gaining admission to the rooms he found the youngest child, aged seven, lying on a bed unconscious, with a deep gash in her throat, and that the convict, although conscious, had a large gash in her throat and one on her wrist. On being approached and questioned by the officer, the convict said, "Leave me alone, I want to die." Both mother and child were at once removed to a hospital, where they remained some months before recovery took place. Some months later the convict was placed on trial, insanity being unsuccessfully pleaded as a defense. No motive whatever was shown on the part of the mother for the attempt on the life of her child except that which appeared inferentially that she wished to destroy her own life as well as that of her offspring. Upon this state of facts I am appealed to to extend clemency to this unfortunate woman.

The only question which can arise under the circumstances is this: Was the woman insane when she committed the act? To me the question is not a difficult one to answer, for I cannot conceive how she could have been otherwise. If she had not made such a desperate assault upon herself, the question would have been more difficult to answer, even though no motive was shown. To conceive that a mother in her right

mind would deliberately, and for no known reason, kill a child she dearly loved—it being shown beyond question that the child was her favorite—is to me a most untenable theory.

I therefore find no difficulty in granting the application, and especially in view of the fact that the convict has already served one-half of her term, allowing for the usual statutory reduction for good conduct.

---

October 10, 1887. William Hope. Sentenced July 11, 1883; county, Queens; crime, arson, second degree; term, ten years; prison, Sing Sing.

Sentence commuted to six years and three months, subject to deduction for good conduct, from July 14, 1883.

The felonious acts for which the conviction in this case was had were perpetrated in the locality where the convict was born and brought up, and where he had always lived. It was shown that he had ever been regarded as thoroughly trustworthy and industrious. He was, however, looked upon as a person of rather feeble intelligence. For some years he had been employed as a man-of-all-work by several of the residents of the locality. His trial showed that he had set fire to an out-building, and also a residence, neither of which was in use at the time. Upon the discovery of the fires, which did but little damage, he showed himself most active and zealous in their extinguishment. No motive whatever could be found for his acts. When the trial took place it does not appear that those best able to speak for him were present. Many gentlemen of the highest standing now appeal for his release, urging that in any event he has been punished enough. They say they are unable to account for the crime, except upon the theory that he set the fires with the hope of gaining credit from his employers by his energy in extinguishing them. I am informed upon reliable authority that the Judge

presiding at the trial said, a short time previous to his death, that had he known as much about the circumstances of the case at the time of the trial as he learned afterward, the sentence imposed would have been much less. The District Attorney, too, who prosecuted the convict, now writes and unqualifiedly urges that clemency be extended. The convict has already served, allowing for the statutory reduction for good conduct, two-thirds of his sentence, and, therefore, it seems, in view of the foregoing, that the prayer of the petitioners may properly be granted.

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November 14, 1887. William Horey. Sentenced June 16, 1884; county, Rensselaer; crime, robbery, second degree; term, twelve years; prison, Clinton.

Sentence commuted to imprisonment in Clinton Prison for the term of five years, subject to deduction for good conduct, from June 21, 1884.

Two persons were engaged in the commission of the crime of which the convict was convicted. The older of the two was arrested some time before the convict, pleaded guilty, and was sentenced to five years' imprisonment. At the prison he made certain statements to the police which tended to show that the convict was the principal offender. The information so received by the officers was communicated to the prosecuting officers of the county, and operated strongly against the convict when he came up for sentence. The District Attorney informs me that he is satisfied that he was misled in supposing that the convict was the principal in the crime, but that, on the contrary, his companion was the leader in the transaction. This view of the case is sustained by the presiding Judge, and both he and the District Attorney ask that the convict receive clemency.

Under these circumstances I have determined that it is but simple equity to commute the convict's sentence to a term, at least, which does not exceed that of his companion's.

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November 14, 1887. George W. Lent, *alias* George Thompson. Sentenced July 18, 1878; county, Kings; crime, burglary, first degree; term, twenty years; prison, Sing Sing—transferred to Auburn.

Sentence commuted to imprisonment in Auburn Prison for the term of twelve years and four months' actual time, from July 19, 1878.

The commutation of this convict's term is granted solely upon the request of the prison officials, who ask it on the ground of very special and important services rendered by him to the State in frustrating the attempts of certain convicts to escape. His term, as now commuted, is simply what it would have been had he not forfeited all possible commutation by two attempts to escape committed some years ago.

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November 17, 1887. Moses Brewer. Sentenced March 21, 1884; county, Chemung; crime, burglary, second degree; term, six years; prison, Auburn.

Sentence commuted to imprisonment in the Auburn Prison for the term of three years, seven months and twenty-nine days, actual time, from March 24, 1884.

This convict is an old colored man, without a settled habitation or friends. He has always stoutly maintained his innocence of the offense, and asks that clemency be extended. In this he is supported by many worthy people who live in the vicinity of the crime, who believe that he is guiltless, and ask that the remainder of his term be remitted. The

committing magistrate, too, most strenuously urges the granting of the application on the ground of the innocence of the convict. The presiding Judge, in reply to my official communication, says: "At the trial my mind was not entirely free from doubt as to his guilt;" and the District Attorney who prosecuted him says that in view of the doubt which exists, he is willing that clemency should be extended. For these reasons, and the further one that the convict has already served the greater portion of his term, I am satisfied that this commutation is entirely justified.

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November 17, 1887. James Nary. Sentenced October 29, 1886; county, Oswego; crime, burglary; term, two years; prison, Auburn.

Sentence commuted to imprisonment in Auburn Prison for the term of one year and fifteen days, actual time, from November 5, 1886.

The crime of this convict consisted in his breaking a window pane, putting his hand through the opening and stealing a small quantity of sausage from a butcher shop, which he was found to be eating when arrested soon after. The evidence disclosed that at the time he was somewhat intoxicated, having been on a jollification with some friends during the evening; that he had been a hard-working man, of general good character, and contributed his earnings to the support of his widowed mother and her large family of young children. A short time since, by a railroad accident, the only other member of the family capable of aiding in its support was killed. A large number of prominent citizens of his county now unite in the request that he be now released, in order that he may be able to aid in the support of his mother's suffering family, and this appeal is joined in by the presiding Judge and the District Attorney. From the facts that the

convict's crime was not of an aggravated nature, that he has already served over one-half of his term, and that if released he can bring comfort to a destitute household, I have decided that the interests of the State will be promoted by reducing his term so that he may be discharged at this time.

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November 28, 1887. Edward Moore. Sentenced December 13, 1884; county, Niagara; crime, forgery, second degree; term, five years; prison, Auburn.

Sentence commuted to imprisonment in Auburn Prison for the term of two years, eleven months and fourteen days, actual time, from December 16 1884.

The forgery consisted in the making of a promissory note by the convict, which purported to be that of his father. It was shown beyond question that the convict, in his business relations with his father, had had authority to sign his name to commercial paper, and this was interposed as a defense to the action. The father denied that he gave his son the right to sign the note in question, which denial was believed by the jury, and hence the conviction. This was the only matter of doubt in the case. The proof on the trial established conclusively that the convict, previous to the act complained of, had enjoyed the respect and confidence of the community. It appears that there is nothing in the convict's antecedents to justify the belief that he is possessed of criminal tendencies. The presiding Judge expresses the opinion that if the convict is now released, he will become a law-abiding citizen, that the punishment already inflicted has worked all the reformatory effect possible, and recommends that clemency be extended. This is also advised by the District Attorney, and the jury who found him guilty unite in asking for his release.



It also appears that the Court, if it had been permitted by the statute, would have imposed a much shorter sentence. The convict has now served the greater portion of his sentence, less the reduction allowed by statute for good conduct in prison. Therefore, in view of the foregoing, I have determined to reduce the term of imprisonment to a period more nearly equaling the sentence which would have been imposed if the law had permitted, than the one which was given.

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November 29, 1887. Michael Burns, *alias* Byrnes. Sentenced October 1, 1886; county, New York; crime, assault, second degree; term, two years and six months; prison, New York Penitentiary.

Sentence commuted to imprisonment in the New York Penitentiary for the term of one year, one month and thirty days, actual time, from October 2, 1886.

This convict, at the time of the commission of the offense, was over seventy years of age, and had borne a good character and been faithful in the performance of his duties. Feeling himself greatly aggrieved, and in a moment of sudden passion, he committed the crime for which he now lies imprisoned. It is urged by his friends that in view of the facts that he has now served out about one-half of his term, and that he has an old and feeble wife utterly unable to maintain herself, his term might consistently be shortened. On these grounds I have decided that the prayer of the petitioners may properly be granted.

December 5, 1887. George Fleming. Sentenced August 27, 1887; county, Greene; crime, vagrancy and stealing a ride on a railroad train; term, five months; prison, Albany County Penitentiary.

Sentence commuted to imprisonment in the Albany County Penitentiary for the term of three months and nine days, actual time, from August 27, 1887.

The facts disclosed under oath in this case, and which are concededly true, show a most outrageous perversion of the administration of justice, and clearly indicate the necessity of some revision of the laws which prescribe the powers and define the duties of inferior magistrates.

This prisoner, aged twenty years, of good character, but in a humble position in life, resided at the time of his conviction, in the city of Newburgh, where he was employed by, and lived with, a dealer in confectionery and ice cream, receiving as compensation the sum of three dollars per week and his board and lodging. On the day of his alleged crime he was sent by his employer in charge of a quantity of ice cream, which the confectioner supplied to a picnic excursion held in a grove near the village of Catskill. The boy attended to his duties, and after they were performed walked about the neighboring village with a companion. On their return to the river side they found the steamer conveying the excursionists had started on its return trip. They went to the station of the railroad near by, and waited for a train. A passenger train soon came along, which they entered, from which, however, the conductor ejected them on learning that they had neither tickets nor money, a short distance from the station. They then returned to the station and waited for another train. A coal train soon came along and stopped for water. The boys requested permission of a brakeman of this train to ride to their home, fully explaining their want of money, how they came to

be left, and who they were. The brakeman told them to stay in the car, that he would speak to the conductor about the matter, and that it would be all right. When the conductor came along he simply said "tickets," but made no inquiries and demanded no money or tickets when the boys failed to respond, nor did he stop the train and put them off, as he had a right to do. When the train reached the next station an officer suddenly appeared, arrested them, waited for the next train, and took them back to Catskill, where he placed them in jail. The next morning they were removed from the cell they had occupied during the night, to another, when a Justice of the Peace appeared and informed them that they were charged with stealing a ride on a railroad train. The boys explained to him who they were, and where they belonged, admitted riding on the train, but urged in extenuation that they had received permission from the brakeman to ride on the train, which was not disputed by the conductor, who had full knowledge of the fact. The Justice seems to have regarded this as a plea of guilty, although it neither appears that he expressly asked them to plead to the charge, or that they admitted their guilt further than above stated. Thereupon the Justice immediately sentenced this convict to five months and his companion to four months' confinement in prison. This so-called court was held in the jail, no formal written complaint was read to the prisoners, neither do the records show that the facts alleged were reduced to writing, or that any witnesses were sworn to contradict the story of the boys that they had received permission to ride on the train. The same day the conviction was had the prisoners were taken to the penitentiary, where they have since remained, their whereabouts unknown to their friends, until recently, when my attention was at once called to the case. The Justice, in

justification of his action, said that he knew that a brakeman had no right to give permission to any person to ride on a train free, and, therefore, in the absence of a right given by a higher authority, the boys were clearly guilty of the crime charged. It need hardly be pointed out that persons of ordinary understanding are not commonly supposed to know the precise regulations which govern the running of a freight train on a railroad.

The character of both the prisoners was shown to have been good; they had never been convicted of crime; they were law-abiding citizens, ignorant and humble, it is true, but entitled, nevertheless, to the best protection of the laws of the State. Under the circumstances above stated they were clearly entirely innocent of any intentional violation of law, and should be discharged.

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December 5, 1887. Matty Farrell. Sentenced August 27, 1887; county, Greene; crime, vagrancy and stealing a ride on a railroad train; term, four months; prison, Albany County Penitentiary.

Sentence commuted to imprisonment in the Albany County Penitentiary for the term of three months and nine days, actual time, from August 27, 1887.

(For reasons see case of George Fleming.)

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December 23, 1887. Arthur E. Marsh. Sentenced January 6, 1886; county, New York; crime, grand larceny, second degree; term, four years; prison, Sing Sing.

Sentence commuted to imprisonment in Sing Sing Prison for the term of one year, eleven months and eighteen days, actual time, from January 7, 1886.

This convict had always been honest and industrious. In a moment of weakness he yielded to temptation and committed the crime for which he now lies imprisoned. When confronted with his accuser he acknowledged his guilt, and made all the restitution in his power. When arraigned for trial he pleaded guilty to the indictment. It is now shown that he is not of criminal tendencies, and that his fall was the result of weakness and overwhelming temptation. His former friends have stood by him during all his trouble, believing that he would again become an honorable and useful man, and have furnished the strongest proof of this by caring for his family and children, and procuring good employment for him if he should be discharged.

The District Attorney writes that in view of the circumstances of the crime, and the punishment already suffered, he is in favor of the convict's release. He has now served nearly two-thirds of his term, allowing for the usual statutory reduction for good conduct, and as it clearly appears all probable reformatory effects have been accomplished, I have decided, in view of this and the foregoing matters, that while I cannot pardon him, to commute his sentence to the term above stated.

## RESPI TE.

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November 1, 1887. John M. Schuyler. Convicted of murder in the first degree, in the county of Otsego, and sentenced to be executed. Re-sentenced September 23, 1887, to be executed November 10, 1887.

Respite granted until Monday, January 30, 1888.

The above-named convict is now under sentence of death, November 10th, next, being the day fixed for his execution. An application has been made to me for a respite in this case by the counsel for the convict. It appears that a motion for a new trial was argued before the Supreme Court on the 26th day of October last, which is undetermined. To-day I have received a certificate from the Court, setting forth that it will be impossible, in view of the importance of the matters urged upon said motion, to determine the same until after the date set for the execution, and recommending that a respite be granted for a sufficient time to enable the Court to determine the motion. The District Attorney consents, and suggests, in view of this motion and a possible appeal from the same, that a respite be granted. It also appears probable that the next General Term before which an appeal from said motion must be argued, if taken, will adjourn before the motion can be decided. In order, therefore, to give sufficient time to enable the Court to determine the motion, and also to dispose of any appeal therefrom which may be taken, I have decided to grant a respite in this case until January 30, 1888.

## COMPARATIVE STATEMENT,

*Showing the number of applications for Executive clemency; also the number of orders granted in each year, from 1865 to December 31, 1887, inclusive, and the percentage to Applications and Convictions.*

GOVERNORS.	Years.	Acts of clemency.	Original applications.	Per cent to original applications.	Convictions.	Per cent to convictions.
Fenton.....	1865	153	278	55	45,053	.0033
Fenton.....	1866	194	452	42	38,334	.0050
Fenton.....	1867	142	440	32	41,046	.0034
Fenton.....	1868	153	400	38	49,913	.0032
Hoffman ....	1869	108	298	36	52,925	.0020
Hoffman ....	1870	120	400	30	52,739	.0022
Hoffman ....	1871	118	344	34	60,577	.0019
Hoffman ....	1872	157	600	26	48,020	.0032
Dix.....	1873	55	242	22	50,242	.0010
Dix.....	1874	95	362	26	65,343	.0014
Tilden .....	1875	100	350	28	63,689	.0015
Tilden .....	1876	160	456	35	66,271	.0024
Robinson....	1877	111	380	29	56,275	.0019
Robinson....	1878	174	402	43	64,754	.0026
Robinson....	1879	211	492	42	64,141	.0032
Cornell .....	1880	56	226	24	70,330	.0008
Cornell .....	1881	19	180	10	72,441	.0003
Cornell .....	1882	20	126	15	78,969	.0003
Cleveland ...	1883	57	290	19	72,323	.0007
Cleveland* ..	1884-5	70	471	14	76,053	.0009
Hill .....	1885	27	196	13	89,793	.0003
Hill .....	1886	46	134	34	91,650	.0005
Hill .....	1887	27	133	20	†92,000	.0003

\* To January 6, 1885. † Estimated.





# INDEX.

## MESSAGES.

	PAGE.
To the Legislature:	
annual .....	3
special, relating to special and local legislation .....	69
To the Senate:	
special, withdrawing nomination of James Arkell as Railroad Commissioner .....	63
special, withdrawing nominations of Messrs. Buckbee and Armstrong as Railroad Commissioners.....	103
special, relating to nominations to office awaiting action by the Senate.....	104
special, withdrawing the nominations of Messrs. Baker and Rogers as Railroad Commissioners .....	115
special, calling attention to nominations to office not acted upon..	171

## MISCELLANEOUS.

Address as President of the Bar Association.....	221
Chautauqua county, order removing the Loan Commissioner of .....	210
Civil Service, the, concerning prison guards and keepers .....	217
Druse, Roxalana:	
appointment of commissioners to examine .....	38
report of commissioners .....	39
Fleischmann, order in the matter of.....	33
Hinckley, Otis V., order removing him from the office of U. S. Loan Commissioner .....	210
Hiscock, certificate of the election of U. S. Senator.....	32
Inter-State Extradition:	
circular letter to Governors, in relation to.....	31
call for a conference of States to establish uniform rules for .....	212
Jamestown, Chautauqua county, letter to the Water Supply Company of.....	126
Memorandum filed with approved bill to amend the charter of Oswego City (A. 138) .....	48
Memorandum filed with bill relating to the U. S. Deposit Fund in Steuben county (A. 85).....	51
Memorandum filed with approved bill changing the site of the Oswego City jail (A. 403).....	62

	PAGE.
Memorandum filed with approved bill amending consolidation act of New York City, relating to the public health (S. 220).....	65
Memorandum filed with bill extending jurisdiction of the Park Commissioners of New York City (A. 168).....	100
Memorandum filed with approved bill to regulate the price of illuminating gas in Brooklyn (S. 97).....	125
Memorandum filed with bill to regulate fishing off Cape Vincent, Lake Ontario (A. 915).....	146
Memorandum filed with approved bill amending the consolidation act of the city of New York, relating to the Comptroller and fire insurance (S. 105).....	156
Memorandum filed with approved bill to regulate the sale of liquors in quantities of five gallons (A. 1276).....	177
Memorandum filed with approved bill concerning the Poughkeepsie Bridge (S. 365).....	180
Memorandum filed with approved bill for a public market in Albany (A. n. p.).....	185
Memorandum filed with approved bill relating to electrical subways in New York City (A. 1209).....	188
New York City:	
public health, amending consolidation act relating to the (S. 220).	65
Park Commissioners, extending the jurisdiction of the (A. 168)...	100
Comptroller and fire insurance, relating to the (S. 105).....	156
electrical subways, relating to (A. 1209). ..	188
Pardons, Commutations and Reprieve.....	235
Public health, the, letter to the Jamestown Water Company in the matter of.....	126
Pleuro-pneumonia in cattle:	
order prescribing regulations for the suppression of.....	214
order prescribing additional regulation.....	219
Ridgway, James W., dismissing charges preferred against him as district attorney of Kings county.....	208
Shaler, Alexander, President of the Department of Health of New York City:	
order confirming his removal from office by the Mayor.....	53
opinion in the same matter....	54

#### PROCLAMATIONS.

Appointing a day of Thanksgiving.....	218
Offering a reward for the murderer of John Walker.....	216

#### VETOES AND BILLS NOT APPROVED.

Actions for conversion, regulating demand prior to (A. 657).....	206
Administrators' bonds, relating to (S. 517).....	205
Agricultural Society of Oswego county, to mortgage property (A. 537).	68

	PAGE
Agricultural societies, relating to (A. 745).....	111
Albany, for dissolution of Hope Savings Bank of (A. 667).....	207
Albany, to amend charter of (A. 1664).....	206
American Female Guardian Society, to amend charter of (A. 300).....	61
Appropriation for indebtedness incurred by legislative committees (S. n. p.).....	175
Appropriations, items in the supply bill (A. 769).....	163
Armory in Middletown, for erection of (S. n. p.).....	193
Armory in Olean, appropriation for a (A. 824).....	193
Assessment of real estate for bonded railroad debts (A. 560).....	197
Assignment of mortgages, to compel the (A. 1127).....	206
Assessments, relating to review of erroneous (S. 557).....	203
Barber's Point, for a ferry at (S. 117).....	157
Beattie, Mary, escheat (A. 1126).....	144
Bedford Reformed Dutch Church, to exempt property of, from taxa- tion (A. n. p.).....	202
Binghamton, to sell property for taxes (A. 793).....	129
Binghamton, to enlarge limits of (A. 453).....	206
Binghamton Masonic Board, to incorporate the (S. n. p.).....	198
Board of Claims, relating to (S. 547).....	207
Bonded debts of real estate for railroad purposes, relating to assess- ment of (A. 560).....	197
Brokers' sale, through bucket shops, to tax (S. 251).....	182
Brooklyn :	
aldermen, relating to the board of (A. 77).....	207
East river bulk-head and pier lines, relating to the (A. 1134).....	207
Equity Gas Light Company, relating to the (A. 816).....	206
fire limits, relating to buildings within (A. 1004).....	200
Irving and Sedgwick streets, relating to (A. 840).....	206
Johnston avenue, for repairing (S. 430).....	205
Jewel street, to close (S. 130).....	205
liquor licenses, for concerts, concerning (A. 1004).....	200
Manhattan avenue, relating to (S. 193).....	205
Methodist Episcopal Hospital, amending charter of the (S. 241)...	202
parks, relating to the department of (A. 1231).....	205
Bucket shops, to tax (S. 251).....	182
Buffalo, to incorporate the Masonic Hall Association of (S. 477).....	201
Burials in Oneonta, relating to (A. 9).....	37
Business corporations, certain, to mortgage real estate (S. n. p.).....	195
Canandaigua, for sewer in (A. 377).....	75
Catskill creek, for iron bridge over (A. 614).....	117
Cazenovia lake, to provide guards around ice cuttings in (A. 530)....	199
Chatham, amending charter of (S. 165).....	206
Claims, Board of, to hear claim of James W. Dudley (A. 369).....	147
Code of Civil Procedure :	
amending sec. 3063, relative to appeals to County Courts (A. 668).	143

	PAGE.
Code of Civil Procedure — Continued :	
amending sec. 2667, relative to administrators' bonds (S. 517)....	205
amending sec. 1252, relating to levy on real property (S. 423)....	205
amending secs. 3068 and 3070, relative to appeals from Justices' Courts (S. 355).....	206
amending sec. 872, relating to contents of affidavits (A. 241)...	206
amending secs. 2263 and 3215, relating to jurisdiction of District Courts (A. 661).....	206
amending secs. 1242 and 3160, relating to conveyance of real property (S. 124).....	207
Code of Criminal Procedure:	
to amend sections 887 and 892 (A. 556) .....	196
to amend the (A. 491).....	205
Commissioner of highways, authorizing towns to have one instead of three (A. n. p.).....	198
Commissioners of highways, regulating compensation of (A. 849)....	196
Constitutional convention, relating to a (A. 1014).....	130
Corning, St. Joseph's Orphan Asylum of, to receive moneys for liquor (A. 338).....	202
Corporations, certain business, to mortgage real estate (S. n. p.)....	195
Corporations, for relief of (A. 384).....	207
Corporations, to authorize stockholders to vote per capita (A. 650)....	206
Cortland Opera House Co., to mortgage property (A. 270).....	113
County Treasurers, relating to fees of (A. 631).....	154
Dansville, to incorporate a G. A. R. Post in (A. 1160).....	200
Deer river, appropriation for improvement of (A. 485).....	192
Delaware river, for improvement of (A. 1033).....	151
Disease in peach trees, to prevent spread of (A. 591).....	112
District Attorney, office of, to be salaried (S. 333).....	144
Docks, Department of, New York City, relating to (A. 837).....	141
Dockmasters in New York City, defining duties of (S. 457).....	194
Dudley, James W., to give standing in Board of Claims to (A. 369)...	147
East Chester, to provide three commissioners of highways for (A. 848)	199
East Chester creek, to change the name of (A. 1204).....	206
Election officers in Queens county, to fix pay of (S. n. p.).....	66
Elmira, to amend charter of (A. 292).....	123
Escheat, to Mary Beattie (A. 1126).....	144
Excise Commissioners of Salem, to legalize acts of (A. 869).....	82
Excise money in towns, relating to (A. 902)....	206
Exempt from taxation, Young Women's Association of Troy, to (S. 59).	46
Fees of County Treasurers, relating to the (A. 631) .....	154
Fire Commissioners in Rome, to extend jurisdiction of (A. 428).....	127
Fishkill, concerning road commissioners of (A. n. p.).....	122
Florida, to incorporate fire engine company in (A. 710).....	200
Fredonia, to amend charter of (A. 1085).....	195
Fultonville, for iron drawbridge over canal in (A. 970).....	192

	PAGE.
Game law, for protection of fish in Lake Erie (A. n. p.).....	195
Game and fish constables, relating to accounts of (A. 1128)....	206
Genesee Valley canal, to release a portion of, to adjoining land- owners (A. 747) .....	201
German American School Society, to exempt from taxation the (A. 638)..	197
Gloversville, to amend charter of (A. 996).....	148
Greene county, to provide for iron bridge over Catskill creek in (A. 614).....	117
Herkimer, for police justice in village of (S. 83).....	43
Highways, to amend law relating to (A. 849).....	196
Highway proceedings, relating to fees of referees in (A. 544).....	207
Highways in Washington and Saratoga counties, appropriation to repair damage in (A. 565).....	191
Hope Savings Bank of Albany, for dissolution of (A. 667).....	207
Incorporation of credit, guarantee and indemnity companies, to amend act for (A. 439).....	197
International Loan, Trust and Guarantee Company, to incorporate the (S. 447) .....	200
Inspection of steam vessels in certain counties, for the (A. 474).....	206
Intoxicants :	
in public buildings, to prohibit sale of (A. 80).....	79
the discriminating liquor tax bill (S. 472).....	172
to amend the law regulating sale of (A. 455) .....	83
to prohibit the sale of, near the Willard Asylum (A. 294).....	67
Jamestown, amending charter of (A. 1189).....	206
Judiciary act of 1847, amending the (A. 941) .....	207
Justices of the Peace, to legalize acts of (A. 84) .....	41
Justices' Courts, relative to appeals from (S. 355)....	206
Kings county, for relief of religious societies in (A. 586).....	206
Lake Champlain:	
to establish a ferry across, at Barber's Point (S. 117).....	157
for a ferry across, in Essex county (S. n. p.).....	201
Lake Erie, for protection of fish in (A. n. p.).....	195
Legislative committees, appropriation for indebtedness incurred by (S. n. p.).....	175
Liens of livery-stable keepers, amending law concerning (A. 802).....	195
Lewis county:	
to have but one superintendent of the poor (S. 474).....	199
appropriation for improvement of Deer river in (A. 485).....	192
Liquor tax bill, the discriminating (S. 472).....	172
Liquor law, to amend the (A. 455).....	83
Livery-stable keepers, amending law providing for liens of (A. 802)..	195
Madison county:	
to enforce collection of taxes in (S. 133) .....	153
for construction of iron bridges over Chenango canal in (S. 273)..	191
Maps in certain wards, New York City, to change the (A. 17 and 374).	77

	PAGE.
Marriage licenses, to provide for (S. 407).....	207
Masonic Hall Association of Buffalo, to incorporate the (S. 477).....	201
Mentz, relating to State ditch in (A. I. 619).....	155
Middletown:	
for erection of armory in (S. n. p.).....	193
to incorporate the city of (A. 1250).....	207
Mohawk cemetery, to define boundaries of (A. 324).....	128
Mortgages, to compel assignment of (A. 1127).....	206
Mt. Vernon, to raise additional tax (A. 1101).....	194
National Guard, appropriation for examination of small arms (A. 1026).....	193
New Baltimore, to consolidate road districts in (A. 933).....	121
Newtown:	
to establish additional school district in (A. 234).....	63
for improvement of road in (A. 850).....	206
New Utrecht, relating to avenues in (A. 1006).....	205
New York Investment Company, to incorporate the (S. 319).....	114
New York and Canada Bridge Company, amending charter of (A. I. 1445).....	206
New York and Oswego Midland R. R., for relief of towns bonded in aid of (A. 197).....	102
New York City:	
Department of Docks, relating to the (A. 837).....	141
Dockmasters, to define the duties of (S. 457).....	194
excise moneys, disposition of (A. 96).....	204
German American School Society, to exempt from taxation the (A. 638).....	197
Hall, James D., for audit of the claim of (S. 451).....	205
maps in certain wards, to change (A. 17 and 374).....	77
Melrose avenue, for alteration of (S. 199).....	204
Nineteenth street, for repaving of (A. 784).....	124
stands in streets, relating to permits for (A. n. p.).....	205
Twenty-third ward, for alteration of streets in (S. 377).....	204
unknown owners of land sold for taxes (A. 1142).....	205
Teachers' Mutual Benefit Association, to incorporate the (S. 181).....	58
wooden buildings, in relation to (A. 813).....	204
Zoological collection in Central Park, for accommodation of the (A. 600).....	187
Normal Schools, to amend law relating to (A. 1077).....	148
Notaries public, to legalize acts of (A. 14).....	51
Ogdensburgh, to incorporate the Y. M. C. A. of (A. 691).....	107
Olean, for the erection of an armory in (A. 824).....	193
Oneonta, relating to burials in (A. 9.).....	37
Ontario county, relating to Loan Commissioner in (S. n. p.).....	142
Orangetown, for Union School District No. 4 (A. 13).....	50
Otsego County Agricultural Society, to mortgage real estate (A. 609).....	120
Oswego County Agricultural Society, to mortgage property of (A. 537).....	68

	PAGE.
Oswego Police Department, relating to (S. I. 729).....	207
Parade-ground in Central Park, New York (S. n. p.).	205
Peach trees, to prevent disease in (A. 591).....	112
Pittsburgh, Lackawanna and North-eastern R. R. Co., to change name of (S. n. p.) .....	40
Police Justice, to provide a, in village of Herkimer (S. 83).....	43
Port Byron, appropriation to enlarge the (A. n. p.).....	191
Provident Industrial Insurance Company to incorporate the (A. 1162).	158
Public buildings, to prohibit sale of intoxicants in (A. 80) .....	79
Public lands, for continuance of survey of (A. 755).....	190
Queens county, to fix pay of election officers in (S. n. p.).....	66
Railroad act, amending the (A. 1066).....	207
Referees in highway proceedings, relative to fees of (A. 544).....	207
Registry law, to amend the (A. 888).....	160
Relief of towns bonded in aid of the New York and Oswego Midland R. R., for the (A. 197).....	102
Religious societies, in Kings county, for relief of (A. 586) .....	206
Rochester, to amend charter of (S. 192).....	205
Rome, to amend the charter of (A. 570).....	152
Rome, to extend jurisdiction of fire commissioners of (A. 428).....	127
Salem, to legalize acts of Excise Commissioners of (A. 869).....	82
Salina, to improve the State ditch in (A. 275).....	108
Salmon river, to improve the (A. 751).....	109
Saratoga Springs, for sewers in Church street (A. 42).....	45
Savannah, to amend charter of (A. n. p.).....	150
School commissioner districts, for division of (S. I. 736) .....	207
School district in Newtown, for an additional (A. 234).....	63
School officers, relating to election of (A. 1264) .....	207
Seth N. Hedges, Post No. 216, G. A. R., to incorporate the (A. 1160).	200
Seventy-first Regiment, to incorporate the Veteran Association of (A. 424).....	139
Sheep-killing by dogs, relating to (A. 846).....	206
Sherburne, for a bridge in (A. 99).....	59
St. Luke's Home, Utica, to change name of (S. 5).....	36
State ditch in Mentz, relating to (A. 1019).....	155
State ditch in town of Salina, to improve the (A. 275).....	108
State Women's Hospital, to amend charter of the (A. 1035) .....	196
Stenographers to grand juries, relating to compensation of (A. 274)...	206
Stenben county, relating to school districts in (A. 777).....	140
Stier, Joseph F., to legalize acts of, as notary public (A. 934).....	120
Supervisors, to amend law relating to powers of (S. 522).....	198
Supply Bill, items in the (A. 769).....	163
Surveys of public lands, appropriation for (A. 755).....	190
Syracuse Water-Works Company, authorizing purchase of the (A. 1136).	206
Tarrytown, for construction of sewers in (A. n. p.).....	199

	PAGE.
Tax propositions, relative to voting by ballot on, at town meetings (A. 577).....	207
Taxes in Madison county, to enforce collection of (S. 133).....	153
Teachers' licenses, relating to (A. 529).....	186
Teachers' Mutual Benefit Ass'n of N. Y. City, to incorporate (S. 181).....	58
Town meetings, voting by ballot at (A. 577).....	207
Treasurers, County, relating to fees of (A. 631).....	154
Troy:	
to amend charter of (A. 319).....	137
to exempt from taxation realty of the Young Women's Association of (S. 59).....	46
Union School District No. 4 of Orangetown (A. 13).....	50
U. S. Loan Commissioner, in Ontario county, relating to (S. n. p.)....	142
Utica:	
for construction of sewer under Erie canal in (A. 935).....	192
to change name of St. Luke's Home in (S. 5).....	36
Van Buren, Onondaga county, for enlargement of Dead creek in (A. 1031).....	190
Veteran Association, Seventy-first Regiment, to incorporate the (A. 424).....	139
Village voters, qualifications of, on water taxes (A. 148).....	149
Waterloo, for a sewer in (A. 692).....	155
Water taxes, qualifications of village voters on (A. 148).....	149
Wayne county, to amend charter of Savannah in (A. u. p.).....	150
Westchester Trust Company, to incorporate the (A. 763).....	206
West Troy, to make contract with Water-Works Company (A. 585)....	116
Whitestown, to enlarge culvert in (S. 275).....	191
Willard Asylum, to prohibit sale of intoxicants near the (A. 294)....	67
Witnesses in criminal cases, relating to (A. 491).....	205
Y. M. C. A. of Ogdensburgh, to incorporate (A. 691).....	107
Yorkshire, for additional Justice of the Peace in (A. 141).....	60
Young Women's Association of Troy, to exempt from taxation the realty of (S. 59).....	46

## COMMUTATIONS.

Brewer, Moses.....	256
Burns, alias Byrnes, Michael.....	259
Doherty, Louise.....	253
Farrell, Matty.....	262
Fleming, George.....	260
Hope, William.....	254
Horey, William.....	255
Lent, George W., alias Thompson, George.....	256
Marsh, Arthur E.....	262
Moore, Edward.....	258
Murphy, William T .....	250



	PAGE.
Nary, James. ....	257
Southwick, Charles H. ....	251
Stokum, John W. ....	249
Thompson, George, alias Lent, George W. ....	259

## PARDONS.

Anderson, Charles. ....	237
Bargy, Hiram. ....	246
Behnke, Charles. ....	242
Cleary, Cornelius. ....	238
Ibach, George. ....	241
Kenney, William, alias Smith, James. ....	242
Lake, John W. ....	240
Loucks, Milward S. ....	241
Moriarty, Michael. ....	247
Riley, Peter. ....	244
Slaughter, William A. ....	238
Smith, James, alias Kenney, William. ....	242
Spencer, John D. ....	245
White, William. ....	248
Williams, John. ....	239

## RESPITE.

Schuyler, John M. ....	264
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